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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18869; Directorate Identifier 2004–NE–23–AD; Amendment 39–14256; AD 2005–18–16]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–3A1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34–3A1 turbofan engines installed on Bombardier series Regional Jets with certain high pressure turbine (HPT) rotating components installed. This AD requires removal from service of certain HPT components prior to the parts exceeding their designated life limits. This AD results from the discovery that the manufacturer removed certain part numbers of HPT rotating components from the Life Limits section of the CF34 Engine Manual, SEI–756. The effect of this manual change was the removal of life limits from certain components that are eligible for installation in GE CF34–3A1 engines. We are issuing this AD to impose life limits on these HPT rotating components to prevent low cycle fatigue (LCF) cracking and failure of those components, which could result in uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective October 13, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7757; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive. The proposed AD applies to GE CF34–3A1 turbofan engines with certain HPT rotating components installed. We published the proposed AD in the **Federal Register** on August 16, 2004 (69 FR 50344). That action proposed a requirement for removal from service of certain HPT components prior to their exceeding designated life limits.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Identify Affected Engines

One commenter states that the AD should identify the specific engines to which it applies or identify the applicable engines by the maintenance manual used. We agree that applicability should be clarified. We have reworded the AD to indicate that it applies only to CF34–3A1 engines installed on Bombardier series Regional Jet Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes with one or more of certain HPT rotating components installed.

Challenger Aircraft Not Affected

Another commenter states that a note should be added to the AD indicating that this AD does not apply to CF34–3A1 engines installed on Challenger aircraft. We agree. We have clarified this AD to indicate that it applies only to engines installed on Bombardier series Regional Jet Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes with one or more of certain HPT rotating components installed.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD would affect eight CF34–3A1 turbofan engines installed on airplanes of U.S. registry. We estimate that no affected engine has a listed HPT rotating component near its original type design life limit. Therefore, we estimate that this AD will not result in any additional direct labor or part costs.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between

the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2005–18–16 General Electric Company: Amendment 39–14256. Docket No. FAA–2004–18869; Directorate Identifier 2004–NE–23–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric CF34–3A1 turbofan engines installed on Bombardier series Regional Jet Model CL–600–2B19 (Regional Jet Series 100 and 440) airplanes with one or more of the HPT rotating components installed, listed in the following Table 1:

TABLE 1.—HPT ROTATING COMPONENTS WITH LIFE LIMITS RESTORED

Part No.	Nomenclature
6078T90P01 ..	Seal, Balance Piston Air.
6017T00P05 ..	Shaft, HPT Rotor.
4027T15P03 ..	Plate, Stage 1 Front Cooling.
6078T93P01 ..	Disk, Stage 1 Turbine.
6078T93P02 ..	Disk, Stage 1 Turbine.
5041T70P03 ..	Plate, Stage 1 Aft Cooling.
5023T97P03 ..	Plate, Stage 2 Rear Cooling.
6078T94P01 ..	Disk, Stage 2 Turbine.
6078T94P02 ..	Disk, Stage 2 Turbine.
5042T29P02 ..	Plate, Stage 2 Front Cooling.
5041T67P02 ..	Coupling, Outer Torque.
5079T02P01 ..	Coupling, Inner Torque.

Unsafe Condition

(d) This AD results from the discovery that the manufacturer removed the HPT rotating component part numbers, listed in Table 1 of this AD, from the HPT Life Limits section of the CF34 Engine Manual, SEI–756. We view this as a change to the life limit of the part, removing the type design life limit and imposing an unlimited life on the part. We are issuing this AD to re-impose life limits on the HPT rotating components with part numbers listed in Table 1 of this AD to prevent LCF cracking and failure of those components, which could result in uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Remove from service the HPT rotating components listed in Table 1 of this AD before exceeding the life limit of 6,000 cycles-since-new.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) GE Temporary Revision No. 05–0073, and Temporary Revision No. 05–0074, for CF34 Engine Manual, SEI–756, also pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on August 31, 2005.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–17761 Filed 9–7–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Quorums

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending § 4.14(b) of its Rules of Practice to provide that the number of Commissioners needed for a quorum will be a majority of those sitting and not recused in a matter.

DATES: *Effective Date:* This amendment is effective September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, 202–326–2451.

SUPPLEMENTARY INFORMATION: The Commission is revising Rule 4.14(b) of its rules of practice. The former rule defined a quorum as ''a majority of the members of the Commission.'' The revised rule defines a quorum as ''[a] majority of the members of the Commission in office and not recused from participating in a matter (by virtue of 18 U.S.C. 208 or otherwise).'' [1] The amendment will allow the Commission to act in more situations than did its former rule.

While the Commission's former rule reflected the ''almost universally accepted common-law rule'' respecting quorums, *FTC* v. *Flotill Products, Inc.*, 389 U.S. 179, 183–84 (1967), that common-law rule (or, more precisely, the common-law rule that applies in the absence of an express statutory provision), does not prevent the adoption of a different quorum rule. *Falcon Trading Group, Ltd.* v. *SEC*, 102 F.3d 579, 582 (D.C. Cir. 1996). The FTC's new rule, like its predecessor, protects against ''totally unrepresentative action in the name of the body by an unduly small number of persons.'' [2] Further, in reducing quorum numbers by virtue of recusals as well as vacancies, the FTC is following the approach taken by the SEC in 1995.[3]

[1] Rule 4.14(c) continues to require, for Commission action, ''the affirmative concurrence of a majority of the participating Commissioners, except where a greater majority is required by statute or rule or where the action is taken pursuant to a valid delegation of authority.''

[2] See Robert's Rules of Order (10th Ed.) § 3, p. 20 (2001) (discussing purpose of a quorum rule); *Assure Competitive Transportation* v. *United States*, 629 F.2d 467 (7th Cir. 1980), *cert. denied*, 429 U.S. 1124 (1981) (quoting Robert's Rules). We understand this to mean that the rule protects against totally unrepresentative actions in the name of the Commissioners able to participate in a matter. This does not necessarily mean that the participating Commissioners would reach the same result that the full complement of sitting Commissioners would have reached if they were all able to participate. But, if that were the test, any quorum rule would fail unless it required that every member of the body participated in every action taken by the body. The FTC's revised rule, like its former rule, also enables Commissioners who oppose an agency action to try to change the minds of their colleagues who are inclined to support it.

[3] The SEC's rule, while it would not find a quorum in every situation where the FTC's new rule would, does provide for quorum size to be reduced by recusals. That rule provides,

The Administrative Procedure Act does not require prior public notice and comment on this amendment because it relates solely to a rule of agency organization, procedure or practice. 5 U.S.C. 553(b)(A). For this reason, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. See 5 U.S.C. 603, 604. The revision does not involve the collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

■ 1. The authority citation for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 4.14(b) to read as follows:

§ 4.14. Conduct of business.

* * * * *

(b) A majority of the members of the Commission in office and not recused from participating in a matter (by virtue of 18 U.S.C. 208 or otherwise) constitutes a quorum for the transaction of business in that matter.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–17856 Filed 9–7–05; 8:45 am]

BILLING CODE 6750–01–P

A quorum * * * shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

17 CFR 200.41. See also *Falcon Trading Group, supra* (upholding rule, in a matter decided by two Commissioners when the SEC's other three seats were vacant, as an exercise of the SEC's general rulemaking authority). Cf. *SEC* v. *Feminella*, 947 F. Supp. 722, 725–27 (S.D.N.Y. 1996) (also upholding the rule, but treating it as a delegation).

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–32; Re: Notice No. 30]

RIN 1513–AA67

Expansion of the Russian River Valley Viticultural Area (2003R–144T)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision expands by 30,200 acres the existing Russian River Valley viticultural area in Sonoma County, California, to a total of 126,600 acres. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: Effective October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Russian River Valley Petition and Rulemaking

General Background

TTB received a petition from the Russian River Valley Winegrowers, a wine industry association based in Fulton, California, proposing a 30,200-acre expansion of the established 96,000-acre Russian River Valley viticultural area (27 CFR 9.66). The viticultural area, located in central Sonoma County, California, is about 50 miles north of San Francisco.

Currently, the Russian River Valley viticultural area boundary surrounds areas north and west of Santa Rosa, north of Sebastopol, east of the Bohemian Highway (about 7 miles inland from the Pacific coast), and south of Healdsburg.

This viticultural area also encompasses all of the Chalk Hill

viticultural area (27 CFR 9.52) in its northeastern corner and all but a small portion of the Sonoma County Green Valley viticultural area (27 CFR 9.57) to its southwest.

The Russian River Valley viticultural area is one of several viticultural areas lying entirely within the Northern Sonoma viticultural area (27 CFR 9.70), which lies largely within the Sonoma Coast viticultural area (27 CFR 9.116). Moreover, the Northern Sonoma and Sonoma Coast viticultural areas are both entirely within the vast North Coast viticultural area (27 CFR 9.30).

The 30,200-acre proposed expansion of the Russian River Valley viticultural area would add areas to the east and south of the area's originally established boundary, bringing its total size to about 126,600 acres. The proposed expansion would include areas with a mix of rural, suburban, and urban land uses between Santa Rosa and Mendocino Avenues in Santa Rosa. To the south, the proposed expanded boundary would incorporate the remainder of the Sonoma County Green Valley viticultural area, as well as a large rural region to the west, south, and east of Sebastopol.

Below, we summarize the evidence presented in the petition.

Name Evidence

The proposed expansion area to the east and south of the Russian River Valley viticultural area is commonly referred to as the Russian River Valley. A State of California hydrology map shows that the Russian River Valley, including the proposed expansion area, is within the Russian River Valley watershed.

An article from the July 2002 Wine Enthusiast magazine (page 31) described the Russian River Valley as ''the box-shaped region that extends from Healdsburg to Santa Rosa in the east, and from Occidental to Guerneville in the west.'' This description includes the areas to be included in the proposed eastern boundary expansion. The 1996 ''Wine Country'' guidebook (page 196) provides a ''Russian River Region'' map that includes the east and south sides of the proposed expanded boundary.

The Homes and Land real estate magazine lists a ''Russian River Appellation Vineyard Estate'' on pages 32 and 33 of Volume 18, No. 7, published in the summer of 2002. This estate is within the eastern portion of the proposed expansion area.

The Wine News June/July 2002 magazine includes an article titled ''Russian River Valley Pinot Noir's Promised Land'' that discusses this winegrowing area. On page 60, it notes that the 24-acre Meredith Vineyard is ''located at the southern end of the RRV [Russian River Valley].'' This vineyard is in the proposed expansion area as well, as noted on the United States Geological Survey Sebastopol quadrangle map.

Boundary Evidence

Historically, agriculture in the proposed expansion area has included apples, prunes, cherries, berries, grapes, and other crops. Local resident Lee Bondi recalls that in the early 1900s his family made wine from Palomino grapes on their ranch in the proposed expansion area. Dena Bondelie, also a resident living in the proposed expansion area, remembers her father talking about the Zinfandel wine made by her grandfather at their Darby Lane property.

Tom Henderson, an area resident, recalls that during World War II his grandparents grew berries, corn, pumpkins, and acorn squash to supplement their apple crop, on their Sander Road property. Merry Edwards, a current resident, states that when she first moved to the area in 1977, it was heavily planted with apples. Today, some of the apple and prune orchards are being replaced with vineyards because of changing agricultural markets.

As of spring 2003, there were approximately 1,070 acres planted to grapes within the proposed expansion area of the Russian River Valley viticultural area, with another 200 acres under development for commercial viticulture purposes.

Distinguishing Features

Treasury Decision ATF–159 of October 21, 1983 (48 FR 48813), established the Russian River Valley viticultural area. This Treasury Decision stated:

> The Russian River viticultural area includes those areas through which flow the Russian River or some of its tributaries and where there is a significant climate effect from coastal fogs. The specific growing climate is the principal distinctive characteristic of the Russian River Valley viticultural area. The area designated is a cool growing coastal area because of fog intruding up the Russian River and its tributaries during the early morning hours.

Climate

Fog is the single most unifying and significant feature of the previously established Russian River Valley viticultural area. The 30,200-acre proposed expansion area also has heavy fog as documented by Robert Sisson, Sonoma County Viticulture Farm Advisor Emeritus, on his 1976 map titled ''Lines of Heaviest and Average Maximum Fog Intrusion for Sonoma County.''

The expansion petition and Treasury Decision ATF–159 both refer to the Winkler degree-day system, which classifies grape-growing climatic regions. (The degree-day system is described as the total summation of accumulated heat units (degrees of temperature) that are above 50 degrees F during each day of the typical growing season from April to October. See ''General Viticulture,'' Albert J. Winkler, University of California Press, 1975.) As noted in Treasury Decision ATF–159, ''The Russian River Valley viticultural area is termed ''coastal cool'' with a range of 2,000 to 2,800 accumulated heat units.''

The petition provides growing season temperature data from 2001 for four vineyards within the proposed expansion area.

Vineyard	Degree days (accumulated heat units)
Le Carrefour	2,636
Osley East	2,567
Osley West	2,084
Bloomfield	2,332

The table above shows that the degree days for all four vineyards fall within the 2,000 to 2,800 accumulated heat units range of Winkler's ''coastal cool'' climate. The evidence confirms that these vineyards in the proposed expansion area have the same grape-growing climate as found within the originally established Russian River Valley viticultural area.

Elevation

The terrain of the proposed expansion area ranges in elevation from about 70 feet east of Sebastopol, to around 800 feet to the west, toward Occidental. These elevations are similar to those found within most of the originally established Russian River Valley viticultural area.

Soils

There is a similar range and diversity of soils in the proposed expansion area and in the originally established Russian River Valley viticultural area. Although Treasury Decision ATF–159 does not identify unique soils within the originally established viticultural area, the similarity of soils is documented on the Sonoma County Soil Survey maps (Department of Agriculture, Soil Conservation Service, U.S. Forest Service, and University of California Agricultural Experiment Station, undated) on survey sheets 65, 66, 73, 74, 80, 82, 88, 89, 96, and 97.

The predominant soils within the proposed expansion area include Huichica Loam, Yolo Clay Loam, and Yolo Silt Loam. These soils are depicted on sheet 74 of the Sonoma County Soil Survey. The same soils are also present in the northern region vineyards of the current Russian River Valley viticultural area, as documented on pages 57 and 66 of the soil survey.

Watershed

The Russian River watershed, unit #18010110, as depicted on the 1978 State of California Hydrology map, covers the Russian River Valley viticultural area and the proposed expansion area. Specifically, the watershed extends from the southern part of Lake Mendocino to Sonoma Mountain, and from the west side of Mt. St. Helena to Jenner, where the Russian River meets the Pacific Ocean. Treasury Decision, ATF–159 states that the Russian River Valley viticultural area ''includes those areas through which flow the Russian River or some of its tributaries.''

Boundary Description

The proposed expanded boundary deviates from the established boundary at a point east of Highway 101, along Mark West Springs Road. From that point, the expanded boundary line, in a clockwise direction, travels south to Todd Road in Santa Rosa. It then meanders west, with a southward bulge south of Sebastopol that incorporates the crossroads hamlet of Knowles Corners. Passing north of the town of Bloomfield, the proposed expanded boundary continues northwest of Freestone, where it rejoins the originally established boundary.

For a detailed description of the proposed change to the Russian River Valley's boundary, see the changes to the narrative boundary description of the viticultural area in the amended regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the amended regulatory text.

Notice of Proposed Rulemaking

TTB published a notice of proposed rulemaking regarding the proposed expansion of the Russian River Valley viticultural area in the **Federal Register** as Notice No. 30 on January 31, 2005 (70 FR 4797). In that notice, TTB requested comments by April 1, 2005, from all interested persons.

TTB received three comments in response to Notice No. 30. One commenter requested an additional 90 days to study the petition but then withdrew the request shortly after submitting it. Two other comments supported the viticultural area expansion. One of the supporting comments indicates that the expansion of the original Russian River Valley viticultural area corrects the ''previously illogical boundaries'' designated by the 1983 establishment of the Russian River Valley viticultural area. The other supportive comment states that the proposed expansion more accurately takes into account the natural boundaries and the unique climate of the Russian River Valley viticultural area.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the proposed expansion of the Russian River Valley viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we expand the boundaries of the ''Russian River Valley'' viticultural area in Sonoma County, California, as proposed, effective 30 days from this document's publication date.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. The proposed expansion of the Russian River Valley viticultural area will not affect currently approved wine labels. The adoption of this expansion may allow additional vintners to use ''Russian River Valley'' as an appellation of origin on their wine labels. For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

Nancy Sutton of the Regulations and Procedures Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.66 by revising paragraphs (b) and (c)(8) through (c)(14), redesignating paragraphs (c)(15) through (c)(26) as (c)(23) through (c)(34), and adding new paragraphs (c)(15) through (c)(22) to read as follows:

§ 9.66 Russian River Valley.

* * * * *

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Russian River Valley viticultural area are 11 United States Geological Survey 1:24,000 Scale topographic maps. They are titled:

(1) Healdsburg, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993;

(2) Guerneville, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993;

(3) Cazadero, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1978;

(4) Duncans Mills California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1979;

(5) Camp Meeker, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1995;

(6) Valley Ford, California Quadrangle, 7.5 Minute Series, edition of 1954; photorevised 1971;

(7) Two Rock, California Quadrangle, 7.5 Minute Series, edition of 1954; photorevised 1971;

(8) Sebastopol, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1954; photorevised 1980;

(9) Santa Rosa, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1954; and

(10) Mark West Springs, California Quadrangle, 7.5 Minute Series, edition of 1998, and

(11) Jimtown, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993.

(c) *Boundaries.* * * *

* * * * *

(8) Proceed southeast along the Bohemian Highway, crossing over the Camp Meeker map, to the town of Freestone, where the highway intersects at BM 214 with an unnamed medium-duty road (known locally as Bodega Road, section 12, T6N, R10W, on the Valley Ford map).

(9) Proceed 0.9 mile northeast on Bodega Road to its intersection, at BM 486, with Jonvive Road to the north and an unnamed light duty road to the south, (known locally as Barnett Valley Road, T6N, R9W, on the Camp Meeker map).

(10) Proceed 2.2 miles south, and then east, on Barnett Valley Road, crossing over the Valley Ford map, to its intersection with Burnside Road in section 17, T6N, R9W, on the Two Rock map.

(11) Proceed 3.3 miles southeast on Burnside Road to its intersection with an unnamed medium duty road at BM 375, T6N, R9W, on the Two Rock map.

(12) Proceed 0.6 mile straight southeast to an unnamed 610-foot elevation peak, 1.5 miles southwest of Canfield School, T6N, R9W, on the Two Rock map.

(13) Proceed 0.75 mile straight east-southeast to an unnamed 641-foot elevation peak, 1.4 miles south-southwest of Canfield School, T6N, R9W, on the Two Rock map.

(14) Proceed 0.85 mile straight northeast to the intersection with an unnamed intermittent stream and Canfield Road; continue 0.3 mile straight in the same northeast line of direction to its intersection with the common boundary of Ranges 8 and 9, just west of an unnamed unimproved dirt road, T6N, on the Two Rock map.

(15) Proceed 1.8 miles straight north along the common Range 8 and 9 boundary line to its intersection with Blucher Creek, T6N, on the Two Rock map.

(16) Proceed 1.25 miles generally northeast along Blucher Creek to its intersection with Highway 116, also known as Gravenstein Highway, in section 18, T6N, R8W, on the Two Rock map.

(17) Proceed 0.2 mile straight southeast along Highway 116 to its intersection with an unnamed light duty road to the north in section 18, T6N, R8W, on the Two Rock map.

(18) Proceed 0.1 mile straight northwest along the unnamed light duty road to its intersection with an unnamed medium-duty road to the east, (known as Todd Road in section 18, T6N, R8W, on the Two Rock map).

(19) Proceed 4.8 miles east, north, and east again along Todd Road, a medium-duty road, crossing over the Sebastopol map and then passing over U.S. Highway 101 and continuing straight east 0.1 mile to Todd Road's intersection with Santa Rosa Avenue, a primary road that is generally parallel to U.S. Highway 101, in section 2, T6N, R8W, on the Santa Rosa map.

(20) Proceed 5.8 miles generally north along Santa Rosa Avenue, which becomes Mendocino Avenue, to its intersection with an unnamed secondary road, known locally as Bicentennial Way, 0.3 mile north-northwest of BM 161 on Mendocino Avenue, section 11, T7N, R8W, on the Santa Rosa map.

(21) Proceed 2.5 miles straight north, crossing over the 906-foot elevation peak in section 35 of the Santa Rosa map, to its intersection with Mark West Springs Road and the meandering 280-foot elevation in section 26, T8N, R8W, of the Mark West Springs map.

(22) Proceed 4.8 miles north-northwest along Mark West Springs Road, which becomes Porter Creek Road, to its intersection with Franz Valley Road, a light-duty road to the north of Porter Creek Road, in section 12, T8N, R8W, on the Mark West Springs map.

* * * * *

Signed: July 6, 2005.

John J. Manfreda,

Administrator.

Approved: August 12, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–17758 Filed 9–7–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–33; Re: Notice No. 33]

RIN 1513–AA97

Establishment of the Niagara Escarpment Viticultural Area (2004R–589P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Niagara Escarpment viticultural area in Niagara County, New York. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: Effective October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9

of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundaries prominently marked.

Niagara Escarpment Petition and Rulemaking

General Background

Michael Von Heckler of Warm Lake Estate Vineyard and Winery petitioned TTB for the establishment of an American viticultural area to be called ''Niagara Escarpment'' in Niagara County, New York. The proposed 18,000-acre viticultural area includes approximately 400 acres of vineyards. The proposed boundary area runs in a narrow 28-mile wide band, starting at the village of Johnson Creek, traveling west through the towns of Gasport and Lockport, and ending at the Niagara River at Lewiston.

Below, we summarize the evidence presented in the petition and the comments received in response to the notice for public comment.

Name Evidence

The proposed Niagara Escarpment viticultural area derives its name from the Niagara Escarpment, a limestone ridge that runs for more than 650 miles through the Great Lakes region. The Niagara Escarpment forms a geological horseshoe that begins near Rochester, New York, and continues west through southern Ontario, Canada, Lake Huron, the upper peninsula of Michigan, and terminates in eastern Wisconsin.

The Niagara Escarpment enters Niagara County in the east near Johnson Creek and then runs west through the middle of the county along State Route 104 to the town of Lewiston. At the west end of Niagara County, the escarpment crosses the Niagara River Gorge, and Niagara Falls is at the head of the gorge.

Excerpts from Government and travel Internet sites discuss the Niagara Escarpment in Niagara County. These include:

- A page on the Institute for Local Governance and Regional Growth Web site that discusses how the Niagara River flows over the Niagara Escarpment creating Niagara Falls. (*See http://www.regional-institute.buffalo.edu/regi/natu.html*)
- Vintage New York's Web site states that the prime vineyard sites in western New York are ''bordered by the Niagara River on the west, Lake Ontario on the north and the Niagara escarpment on the south.'' (*See http://www.vintagenewyork.com/regions/erie.html*)
- The Niagara Tourism and Convention Corporation's Web site notes that Niagara Landing Wine Cellars, a Niagara County winery, is ''located at the base of the Niagara Escarpment.'' (*See http://www.niagara-usa.com/attractions/niagaralanding.html*)
- The Western New York Regional Information Network's Town of Cambria Web site describes the town as an agricultural town ''divided in the middle by the Niagara Escarpment.'' (*See http://www.wnyrin.com/c_niag/welc/juri/juri_cambt*)

In addition, a July 26, 2004, *Toronto Star* newspaper article on New York wineries included with the petition discusses the Niagara Escarpment, and notes that:

> Ontario wine lovers are keenly aware of the Niagara Escarpment, and ''the Bench'' creating a special microclimate for grape growing in Niagara. Well, guess what: It comes up in New York State on the other side of the lake, in Lockport, north of Lewiston.

Boundary Evidence

The geography of the Niagara Escarpment defines the boundary of the proposed viticultural area. The steepness of the Niagara Escarpment makes it topographically distinct from the Ontario Plain, which extends from the south shore of Lake Ontario to the base of the escarpment, and the Huron Plain, which begins at the escarpment's crest and extends southward past the Niagara County line.

The Ontario Plain and the Huron Plain are relatively flat, with slopes of less than 20 feet per mile, according to the Soil Survey of Niagara County, New York (1972). In contrast, the Niagara Escarpment has a steep slope of 106 to 317 feet per mile. The southern and northern boundaries of the proposed Niagara Escarpment viticultural area encompass the north-facing slope of the escarpment between the 600- and 400-foot elevation lines. These boundaries generally delineate the high and low altitudes of the slope within the proposed viticultural area boundaries.

The Niagara River, which forms the international boundary line between the United States and Canada, also marks the western boundary of the proposed viticultural area. The portion of the Niagara Escarpment that extends west from the Niagara River, into the Canadian province of Ontario, is included in the Niagara Peninsula viticultural area, as designated by the Government of Canada.

At the eastern end of Niagara County a portion of Johnson Creek, south of the village of the same name, forms the proposed eastern boundary line. East of the creek, elevations at the base of the Niagara Escarpment climb from 400 to 500 feet, and its slope becomes much narrower and steeper. The changes in topography east of Johnson Creek make it less desirable for viticulture. Therefore, the petitioner did not include the escarpment area east of Johnson Creek within the proposed viticultural area boundaries.

Distinguishing Features

Topography and Soils

The topography and soils of the proposed viticultural area create distinct conditions for grape growing as compared to the surrounding areas. The Ontario and Huron Plains are nearly flat with deep soils that can harbor excessive water and nutrients. In contrast, the Niagara Escarpment has shallow soils with poor nutrient content, and sufficient sloping (2–6 percent) to allow for drainage.

The conditions found in the proposed Niagara Escarpment viticultural area—

well drained soils, sufficient sloping, a steady but moderate water supply, and restricted mineral content—result in grapes with superior pigment and flavor compounds in the resultant wine. On the other hand, the conditions of the surrounding areas beyond the proposed boundaries—poor soil drainage and high nutrient content—result in grapes with less pigmentation, diluted flavors, and a lower quality of wine produced.

As evidence of these soil differences, the ''Soil Survey of Niagara County, New York'' states that the central portion of Niagara County, along the escarpment, contains the Hilton-Ovid-Ontario soil association. It describes this association as ''deep, well-drained to somewhat poorly drained soil.'' In contrast, the survey states that the Ontario Plain north of the escarpment contains the Rhinebeck-Ovid-Madalin association, which has ''deep, somewhat poorly drained to very poorly drained soils.'' The Huron Plain south of the escarpment contains the Odessa-Lakemont-Ovid association, which has ''deep, somewhat poorly drained to very poorly drained soils.''

Climate

The location of the proposed Niagara Escarpment viticultural area, in relation to Lake Ontario, creates a microclimate conducive to grape growing. The maritime influence of Lake Ontario on the Niagara Escarpment allows for sufficient heat accumulation for the growing season in what is otherwise a cool climate. The ''Soil Survey of Niagara County, New York,'' notes that Lake Ontario greatly influences the climate of Niagara County. The survey states, ''In fall the lake waters are a source of heat that reduces cooling at night and increases the length of [the] freeze-free growing season.''

The climatic relationship between Lake Ontario and the Niagara Escarpment is discussed in greater detail in ''Site Selection for Grapes in the Niagara Peninsula,'' a publication issued by the Horticultural Research Institute of Ontario to assist grape growers in the Niagara Peninsula of Canada in selecting the best vineyard sites. The climate information of the publication can be applied to the proposed Niagara Escarpment viticultural area, which is adjacent to the Niagara Peninsula and shares Lake Ontario and the Niagara Escarpment with the peninsula.

According to the site selection publication, a unique airflow pattern affects the land between Lake Ontario and the crest of the escarpment. While the land warms quickly on warm days and cools rapidly on cool nights, the lake temperature changes more slowly. In the spring the lake temperature is cooler than the temperature of the adjacent land, while in the fall the lake is warmer than the land. The lake-warmed air rises and draws cooler air in from the lakeshore in the fall and creates offshore breezes. As a result, the site selection publication states, ''the air now above the lake is warmed, rises and flows back over the land, creating a circular heat-pump effect.''

In the spring and early summer the airflow pattern of the lake cools the adjacent land. Areas within two miles of the lakeshore can have a two-week delay in bud break due to the cooling effect of the lake. Also, daytime temperatures are often cooler because of the air currents of the lake. The site selection publication notes that ''most grape cultivars require a long, warm season and fruit quality is sometimes poor close to the lake because of lower day temperatures.'' Conversely, the proposed Niagara Escarpment viticultural area, between 6 and 8 miles from Lake Ontario, experiences little or no delay in bud break or cooler daytime temperatures due to the lake influence.

The ''Site Selection for Grapes in the Niagara Peninsula'' publication notes: ''The pattern airflow is altered by the slope of the land. With steep slopes, cold air drainage is rapid. Flat areas or depressions tend to accumulate cold air and become 'frost pockets.' '' For areas between the lake and the escarpment, this airflow pattern minimizes frost conditions and increases heat accumulation, thereby extending the growing season of the proposed Niagara Escarpment viticultural area. Areas south of the escarpment do not benefit from the effect of the airflow pattern and are more prone to frost damage.

The proposed Niagara Escarpment viticultural area has an extended ripening season when compared to grapes grown outside its boundary. In contrast, the areas north of the escarpment experience cooling spring temperatures that retard growth, while areas south of the escarpment are more prone to fall frost damage.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the regulatory text.

Notice of Proposed Rulemaking and Comments Received

On February 9, 2005, TTB published in the **Federal Register** (70 FR 6792) a notice of proposed rulemaking regarding the establishment of the Niagara Escarpment viticultural area (Notice No. 33). In that notice, TTB requested comments by April 11, 2005, from all interested persons. TTB received three comments. The first stated concerns with the proposed ''Niagara Escarpment'' name, and the second constituted a rebuttal from the petitioner on the first comment about the ''Niagara Escarpment'' name.

The first commenter, Steve DeBaker, is from a grape-growing region of Door and Brown counties in northeast Wisconsin that is located on the Niagara Escarpment. He explained that the escarpment covers a region substantially larger than the proposed viticultural area in New York and suggested amending the proposed viticultural area name to ''Niagara Escarpment New York.'' In conjunction with the state modifier, Mr. DeBaker expressed interest in petitioning for a ''Niagara Escarpment Wisconsin'' viticultural area.

The second comment, by the petitioner Michael Von Heckler, argued that the Niagara Escarpment viticultural area, including its name, should be established as originally proposed. Mr. Von Heckler explained that a search of literature for the ''Niagara Escarpment Wisconsin'' name resulted in information about flora, fauna, and recreational opportunities. The search made no mention of wine grape growing within the Niagara Escarpment geological boundaries in Wisconsin, according to Mr. Von Heckler. Also, the Wisconsin Agricultural Statistics Service does not publish grape production information because the amount of grapes produced is too small to report. Mr. Von Heckler suggested that, at some future time, Mr. DeBaker could submit a petition to expand the boundary of the Niagara Escarpment viticultural area after its establishment.

TTB, after careful consideration of the two comments, believes it is not necessary to establish the ''Niagara Escarpment'' viticultural area with the ''New York'' geographical modifier. TTB believes that if a future petitioner, in another area of the Niagara Escarpment, submits a new viticultural area petition, then a geographical modifier, such as Wisconsin, can be added for clarity and to avoid consumer confusion.

TTB also received a third comment on the proposed Niagara Escarpment viticultural area in New York from

Vintners Quality Alliance of Ontario, Canada (VQAO) because Canada is considering designation of a Niagara Escarpment viticultural area in southern Ontario. The VQAO Executive Director, Laurie Macdonald, believes the two Niagara Escarpment viticultural areas, one in Canada and one in the United States, can co-exist without consumer confusion. As she noted, Canadian producers must include the name Canada as the country of origin on the wine label, and wine producers and bottlers in Ontario must also include ''VQA'' in conjunction with the stated appellation term, such as ''Niagara Escarpment.'' In light of these comments, we believe that wine produced in the Canadian Niagara Escarpment viticultural area will not be confused with the ''Niagara Escarpment'' wine produced in the United States.

TTB Finding

After careful review of the petition, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Niagara Escarpment'' viticultural area in Niagara County, New York, effective 30 days from this document's publication date.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Niagara Escarpment,'' is recognized as a name of viticultural significance. Consequently, wine bottlers using ''Niagara Escarpment'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

Nancy Sutton of the Regulations and Procedures Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.186 to read as follows:

§ 9.186 Niagara Escarpment.

(a) *Name.* The name of the viticultural area described in this section is ''Niagara Escarpment''. For purposes of part 4 of this chapter, ''Niagara Escarpment'' is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the ''Niagara Escarpment'' viticultural area are five United States Geological Survey 1:250,000 scale topographic maps. They are titled:

(1) Lewiston, New York—Ontario, 1980;
(2) Ransomville, New York, 1980;
(3) Cambria, New York, 1980;
(4) Lockport, New York, 1980; and
(5) Gasport, New York, 1979.

(c) *Boundary.* The Niagara Escarpment viticultural area is located in Niagara County, New York. The boundary of the Niagara Escarpment viticultural area is as described below:

(1) On the Lewiston map, south of the village of Lewiston within the Brydges State Artpark, begin on the east bank of the Niagara River at the mouth of Fish Creek; then

(2) Proceed north along the east bank of the Niagara River about 0.6 mile to the northern boundary of the Brydges State Artpark; then

(3) Proceed east along the northern boundary of the Brydges State Artpark about 0.8 mile to the park's northeast corner, and continue east in a straight line a short distance to the Robert Moses Parkway; then

(4) Proceed north along the Robert Moses Parkway about 0.25 mile to Ridge Road, and then east on Ridge Road (State Route 104) about 0.15 mile to the road's first intersection with the 400-foot contour line; then

(5) Continue easterly along the 400-foot contour line, through the Ransomville map (crossing Model City Road, Dickersonville Road, and State Route 429) and the Cambria map (crossing Baer Road, Plank Road, and State Route 93/270), and pass onto the Lockport map to the contour line's junction with Sunset Drive; then

(6) Proceed north on Sunset Drive 0.3 mile to its intersection with Stone Road, then east on Stone Road about 1.25 miles (crossing Eighteenmile Creek) to the intersection of Stone, Purdy, and Old Niagara Roads, and continue east along Old Niagara Road about 0.4 mile to its first intersection with the 400-foot contour line; then

(7) Proceed northeasterly along the 400-foot contour line to its first junction with Slayton Settlement Road, proceed east on Slayton Settlement Road to Day Road, and then proceed north on Day Road to its first junction with the 400-foot contour line; then

(8) Proceed easterly along the 400-foot contour line, pass onto the Gasport map (crossing Humphrey and Orangeport Roads), and continue to the contour line's junction with Quaker Road; then

(9) Proceed north on Quaker Road about 0.4 mile to its intersection with State Route 104, and then east on State Route 104 to its intersection with Johnson Creek (at the village of Johnson Creek); then

(10) Proceed south along Johnson Creek (crossing the Erie Canal), to the creek's junction with Mountain Road; then

(11) Proceed west on Mountain Road to its intersection with Gasport Road, then south on Gasport Road to its intersection with Mill Road, then west on Mill Road to its intersection with Kayner Road, then north on Kayner Road 0.65 mile to its junction with the 600-foot contour line; then

(12) Proceed westerly along the 600-foot contour line (crossing Cottage Road) to its junction with State Route 31, and continue west on State Route 31, passing onto the Lockport map and crossing the Erie Canal within the city of Lockport, to the intersection of State Route 31 and Upper Mountain Road; then

(13) Proceed north-northwesterly on Upper Mountain Road 0.65 mile and then northerly on Sunset Drive 0.25 mile to the junction of Sunset Drive and the 600-foot contour line; then

(14) Proceed westerly along the 600-foot contour line, continuing through the Cambria map (crossing State Route 93/270 and then Blackman and Baer Roads), through the Ransomville map (crossing State Route 429 just north of Pekin and then crossing Black Nose Spring and Model City Roads), and, passing onto the Lewiston map, continue westward along the contour line (through the Escarpment, Ramsey Ridge, and Lewiston Heights subdivisions), to the contour line's junction with Mountain View Drive (just east of State Highway 104 near the Niagara Falls Country Club); then

(15) Proceed west along Mountain View Drive to its intersection with State Route 104, and then proceed south on State Route 104 to its junction with Fish Creek; then

(16) Proceed westerly along Fish Creek and return to the beginning point on the east bank of the Niagara River at the mouth of Fish Creek.

Signed: July 8, 2005.

John J. Manfreda,

Administrator.

Approved: August 12, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–17759 Filed 9–7–05; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. R02–OAR–2005–NY–0002; FRL–7959–1]

Approval and Promulgation of Implementation Plans; Onondaga County Carbon Monoxide Maintenance Plan Revision; State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New York. This revision will establish an updated ten-year carbon monoxide (CO) maintenance plan for the Onondaga County attainment area.

Onondaga County was redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on September 29, 1993 and a maintenance plan was also approved at that time. By this action, EPA is approving the New York State Department of Environmental Conservation's (New York) second maintenance plan for Onondaga County because it provides for continued attainment for an additional ten years of the CO NAAQS. In addition, EPA is approving New York's revised Part 225–3 (Oxygenated Gasoline Program provisions).

DATES: This rule is effective on November 7, 2005, without further notice, unless EPA receives adverse written comment by October 11, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0002 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/.* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select quick search, then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *werner.raymond@epa.gov.*

4. Fax: (212) 637–3901.

5. Mail: RME ID Number R02–OAR–2005–NY–0002, Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866.

6. Hand Delivery or Courier: Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are anonymous access systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 2 Regional Office, 290 Broadway, New York, NY.

EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, U.S. Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, NY 10007–1866, telephone number (212) 637–4249, fax number (212) 637–3901, e-mail *feingersh.henry@epa.gov.*

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

SUPPLEMENTARY INFORMATION:

The following table of contents describes the format for this section:

I. What Is the Nature of EPA's Action?

EPA is approving an updated ten-year CO maintenance plan for the Onondaga County attainment area. On September 29, 1993, the EPA approved a request from New York to redesignate Onondaga County to attainment of the CO NAAQS (58 FR 50851). In addition, the EPA also approved at that time a ten-year CO maintenance plan for Onondaga County. The Clean Air Act (the Act) requires that an area redesignated to attainment of the CO NAAQS must submit a second ten-year CO maintenance Plan to show how the area will continue to attain the CO standard for an additional ten years. On June 22, 2004, New York submitted a second ten-year CO maintenance plan for Onondaga County and requested that EPA approve the plan. The following sections describe how the EPA made its determination to approve the second ten-year maintenance plan.

II. What Is a Maintenance Plan and Why Is it Required?

A maintenance plan is a SIP revision that must demonstrate continued attainment of the applicable NAAQS in the maintenance area for at least ten years. The Act requires that a second ten-year plan be submitted in order to assure that the area will continue to stay in compliance of the relevant NAAQS.

III. What Is Included in a Maintenance Plan?

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The initial and subsequent ten-year plans must each demonstrate continued attainment of the applicable NAAQS for at least ten years after approval. In this notice, EPA is taking action on the second ten-year maintenance plan which covers the period from 2003 to 2013. The specific elements of a maintenance plan are:

A. Attainment Inventory

Since New York's first ten-year maintenance plan contained an attainment inventory, this second ten-year maintenance plan did not need to include another one. However, this second plan does include an update to the attainment inventory. In addition, the update contains a revised 1990 base year inventory, a 2003 inventory, and projected inventories for 2009 and 2013.

B. Maintenance Demonstration

The State projects that the future emissions of CO will not exceed the level of the 1991 attainment year inventory. This is demonstrated by the projected 2009 and 2013 CO emission levels being below the 1991 attainment year level.

C. Monitoring Network

New York continues to operate its CO monitoring network and commits to operating its highest reading CO monitor for the duration of this maintenance plan. New York will continue annual reviews of its data in order to verify continued attainment of the NAAQS. The improvement in CO air quality can be seen through an examination of the design values at their highest reading monitor. The 8-hour design values show a downward trend with values currently in the 2.0–2.5 ppm range compared to the 8-hour NAAQS for CO of 9.0 ppm. The other monitors in the network have been recording CO levels below this range.

D. Verification of Continued Attainment

New York will verify that Onondaga County continues to attain the CO NAAQS through the review of its monitoring data. In addition, the State will submit periodic inventories for the County to EPA pursuant to EPA guidance. Triannual inventory submittals will be compared to the 2003 inventory to ensure that future inventories will not exceed the 2003 inventory which in turn was below the 1991 base year inventory.

E. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include a contingency plan which includes contingency measures, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. In addition, the contingency plan includes a requirement that the State continue to implement all control measures used to bring the area into attainment.

1. Control Measures

The 1992 Redesignation Request and Maintenance Plan included vehicle turnover, an inspection and maintenance program, and traffic flow improvement measures as the programs that brought the area into attainment. This maintenance plan continues to include those measures as control measures. In addition, New York has adopted ''the California Low Emission Vehicle II standards'' as a control program in title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 218, ''Permits and Certificates.'' This program produces a greater level of CO emission reductions than does the EPA's National Tier 2 programs.

2. Contingency Measures

The ''Low Enhanced Inspection and Maintenance Program'' has been adopted by New York and identified as the contingency measure for Onondaga County. New York has requested EPA's approval of substituting the Oxygenated Gasoline Program found in 6 NYCRR,

Part 225–3 from the previous maintenance plan with the adopted motor vehicle low enhanced inspection and maintenance program, as found in 6 NYCRR Part 218, ''Emission Standards for Motor Vehicles and Motor Vehicle Engines,'' as a contingency measure for Onondaga County. EPA previously approved Part 218 on January 6, 1995 (60 FR 2025). New York has sufficiently demonstrated that the low enhanced inspection and maintenance program will achieve equivalent CO reductions as the Oxygenated Gasoline Program. This low enhanced inspection and maintenance program is required as an ozone control strategy but also results in CO reduction benefits which is being used here as a CO contingency control measure. This program includes a gas cap presence check, anti-tampering procedures and a visual check of the malfunction indicator light.

IV. What Is Transportation Conformity?

Section 176(c) of the Act defines conformity as meeting the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The Federal Transportation Conformity Rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of Federal funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. chapter 53).

The Transportation Conformity Rule applies within all nonattainment and maintenance areas. As prescribed by the Rule, once an area has an applicable SIP with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with (''conform to'') such established budgets for that area.

V. Are These Transportation Conformity Budgets Approvable?

The proposed maintenance plan establishes transportation conformity budgets for CO for the years 2003, 2009 and 2013. These new budgets are based on the control strategies, growth projections and assumptions used in the attainment demonstration and maintenance plans for the CO nonattainment area. In addition, the 2009 and 2013 conformity budgets also include an allocation of a portion of a ''safety margin'' established in the CO maintenance plan.

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. For example, since 2003 represents the last year of Onondaga County's first ten-year maintenance plan and its total emissions is lower than the base year, the ''safety margin'' is conservatively calculated using the differences between 2003 and future year total emissions.

The total emissions in 2003 from mobile, stationary and area sources equaled 654.69 tons per day of CO. New York projected the CO emissions in Onondaga County from all sources for the years 2009 and 2013 to total 455.34 tons per day and 430.06 tons per day respectively. The CO safety margin for Onondaga County in 2009 and 2013 is calculated to be the differences between the total emissions in 2003 and the total emissions for each of the projected years, 199.35 tons per day for 2009 and 224.63 tons per day for 2013. The 2009 and 2013 CO emission projections reflecting the point, area and mobile source reductions are illustrated in Table 1.

TABLE 1.—CO EMISSIONS; AND SAFETY MARGIN DETERMINATIONS, ONONDAGA COUNTY, NY

[Tons/day]

Source category	CO emissions		
	2003	2009	2013
On-Road	494.55	273.11	232.23
Nonroad	58.58	66.83	72.14
Stationary/Area	101.56	115.40	125.69
Total	654.69	455.34	430.06

2009 Safety Margin=2003 total emissions—2009 total emissions = 199.35 tons/day.
2013 Safety Margin=2003 total emissions—2013 total emissions = 224.63 tons/day.

In the submittal the State requested to allocate only a portion of the safety margin to both the 2009 and 2013 motor vehicle emissions budgets. This conservative approach provides the transportation sector with an adequate budget increase for the two future scenario years, such that transportation conformity is demonstrated, and at the same time provides some assurance that potential currently unforseen regional growth in non-mobile, area and stationary source emissions will not otherwise jeopardize continued attainment. The SIP revision requests the allocation of 99 tons CO per day to be applied to the 2009 motor vehicle emissions budget and 125 tons CO per day to be applied to the 2013 motor vehicle emissions budget. The on-road mobile source CO transportation conformity budgets that include the safety margin allocation are outlined below in Table 2.

TABLE 2.—CARBON MONOXIDE TRANSPORTATION CONFORMITY BUDGETS

[Tons of CO/winter day]

Year	On-road Emissions	Safety margin allocation	Final CO conformity budgets
2003	495	N/A	495
2009	273	99	372
2013	232	125	357

The planned allowable levels of CO emissions are projected to maintain the area's air quality consistent with the air quality health standard. The safety margin credit can be allocated to the transportation sector while maintaining air quality attainment. The total emission level, even with this allocation, will be below the attainment level, or safety level, and thus is acceptable.

On June 3, 2004, EPA sent a letter to New York stating that the 2003, 2009 and 2013 CO budgets are adequate for transportation conformity purposes. This finding was published in the **Federal Register** on July 12, 2004, at 69 FR 41801. These budgets are consistent with the State's emission baseline, projected inventories for highway mobile sources and use of a margin of safety. EPA is approving the 2003, 2009, and 2013 transportation conformity budgets for CO.

VI. What Is EPA's Action on New York's Part 225–3?

New York's 1992 Redesignation Request and Maintenance Plan included the Oxygenated Fuels Program (as found in 6 NYCRR, Part 225–3) as a contingency measure for Onondaga County. However, on April 19, 2000 (65 FR 20909), EPA approved New York's request to remove the Oxygenated Fuels Program from the Federally approved SIP. The reader is referred to EPA's April 19, 2000, final rulemaking for a detailed discussion of the rationale for that action. As discussed above, this action now identifies the low enhanced inspection and maintenance program as the contingency measure which replaces the Oxygenated Fuels Program. New York has since revised Part 225–3 (October 2001) to remove the Oxygenated Gasoline Program provisions from the State effective version of Part 225–3 and has requested this version be incorporated into the Federally approved SIP. New York's revision to Part 225–3 consists of renumbering the subparts to accommodate the removal of the Oxygenated Gasoline Program provisions. While EPA previously approved the removal of the Oxygenated Gasoline Program provisions from the Federally approved SIP, an updated version of the adopted State regulation was not available. The State has included this updated version of Part 225–3 as part of this SIP revision and EPA is incorporating this regulation into the SIP at this time.

EPA is also correcting two typographical errors that occurred in our approval of revisions to Parts 228 and 239 (see 69FR3237, January 23, 2004). The State effective date for these regulations should be 7/23/03 and 11/4/02, respectively.

VII. Conclusion

EPA has evaluated New York's submittals for consistency with the Act and Agency regulations and policy. EPA is approving New York's CO maintenance plan because it meets the requirements set forth in section 175A of the Act and continues to demonstrate that the NAAQS for CO will continue to be met for the next ten years. EPA is also approving the 2003, 2009, and 2013 transportation conformity budgets for CO. In addition, EPA is approving New York's revised Part 225–3.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region 2 Office by one of the methods discussed in the **ADDRESSES** section of this action.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a significant regulatory action and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: August 11, 2005.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(108) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(108) Revisions to the State Implementation Plan submitted on June 22, 2004, by the New York State Department of Environmental Conservation, which consists of a revision to the carbon monoxide maintenance plan for Onondaga County.

(i) Incorporation by reference:

(A) Regulation Part 225–3, ''Fuel Composition and Use—Gasoline.'' of Title 6 of the New York Code of Rules and Regulations, filed on October 5, 2001, and effective on November 4, 2001.

■ 3. In § 52.1679, the table is amended by revising the entries under Title 6 for Part 225–3, Part 228, and Part 239 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * *	*	*	* * *
Part 225–3, Fuel Composition and Use—Gasoline	11/4/01	9/08/05 and FR page citation.	The Variance adopted by the State pursuant to section 225–3.5 becomes applicable only if approved by EPA as a SIP revision.
* * *	*	*	* * *
Part 228, ''Surface Coating Processes''	7/23/03	1/23/04, 69 FR 3240.	
* * *	*	*	* * *
Part 239, ''Portable Fuel Container Spillage Control''.	11/4/02	1/23/04, 69 FR 3240.	The specific application of provisions associated with alternate test methods, variances and innovative products, must be submitted to EPA as SIP revisions.
* * *	*	*	* * *

■ 4. Section 52.1682 is amended by adding paragraph (c) to read as follows:

§ 52.1682 Control strategy: Carbon monoxide.

* * * * *

(c) Approval—The June 22, 2004 revision to the carbon monoxide maintenance plan for Onondaga County. This revision contains a second ten-year maintenance plan that demonstrates continued attainment of the National Ambient Air Quality Standard for carbon monoxide through the year 2013 and CO conformity budgets for the years 2003, 2009, and 2013.

[FR Doc. 05–17721 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–05–21161; Notice 2]

RIN 2127–AJ62

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulation on civil penalties by increasing the maximum aggregate civil penalties for violations of statutes and regulations administered by NHTSA pertaining to odometer tampering and disclosure requirements and vehicle theft protection. This action is taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: This rule is effective on October 11, 2005. If you wish to submit a petition for reconsideration of this rule, your petition must be received by October 24, 2005.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (referred to collectively as the ''Adjustment Act'' or, in context, the ''Act''), requires us and other Federal agencies to regularly adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years. For further details on this adjustment process, the statutory formula, and the agency's history of penalty adjustments, we refer readers to our May 25, 2005 Notice of Proposed Rulemaking (''NPRM'') at 70 FR 30051.

Revision of Civil Penalties Prescribed by Section 578.6

In the NPRM, we reviewed penalties in 49 CFR 578.6, calculated updated penalties using the appropriate Consumer Price Index figures, considered the nearest higher multiple specified in the rounding provisions, and proposed that the penalties discussed below be increased.

We received one comment on our proposal from a private individual who recommended that the agency impose no penalty under $1,000,000 and that a maximum penalty of $5,000,000 be imposed on violators of the provisions that we proposed to adjust. As we explained in our earlier notice, the amounts by which the agency can adjust its civil penalties are specifically prescribed by statute. Modifying our proposal as suggested in this comment would be inconsistent with the penalty provisions in the applicable statutes and with the Adjustment Act. Therefore, we are not making the change suggested by the commenter. Instead, we are adjusting the penalties as proposed in our NPRM and as addressed below.

Odometer Tampering and Disclosure, 49 U.S.C. Chapter 327 (49 CFR 578.6(f)(1))

The agency last adjusted its civil penalties for violations of odometer tampering and disclosure requirements under 49 U.S.C. Chapter 327 in 2001. Applying the formulation as set out in the NPRM, the adjusted civil penalty amount for violations of 49 CFR 578.6(f)(1) is raised from $120,000 to $130,000. As explained in the NPRM, the maximum civil penalty amount for single violations of 49 CFR 578.6(f)(1) remains at $2,200 because the inflation-adjusted figure is not yet at a level to be increased. *See* 70 FR at 30052. For similar reasons, the penalty amount prescribed in Section 578.6(f)(2) for a violation that involves the intent to defraud (the greater of three times actual damages or $2,000) remains the same.

Vehicle Theft Protection, 49 U.S.C. Chapter 331 (49 CFR 578.6(g)(1)–(2))

The civil penalties related to vehicle theft protection were last adjusted in 2001. Applying the appropriate inflation factor as described in the NPRM raises the civil penalty amount in Section 578.6(g)(1) from $300,000 to $325,000. *Id.* Similarly, applying the same statutorily mandated formula to Section 578.6(g)(2) yields an increase from $120,000 to $130,000. Maximum penalties for single violations of 49 U.S.C. 33114(a)(1)–(4) as provided under Section 578.6(g)(1) will remain at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Other Issues—Technical Correction

The agency is also amending the language in 49 CFR 578.6(g)(2) to achieve consistency within the text of the regulation by capitalizing the word ''Government'' after ''United States'' to reflect that word's usage within other parts of Section 578.6.

Rulemaking Analyses and Notices

Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (As Amended)

As earlier discussed, the statutory basis for this final rule is the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–34) (referred to collectively as the ''Adjustment Act'' or, in context, the ''Act''), which provides for agencies to adjust civil penalties for inflation, as warranted, at least once every four years. In 2001, the NHTSA last adjusted the civil penalties for violations of odometer tampering and disclosure requirements under 49 U.S.C. Chapter 327 and the civil penalties related to vehicle theft protection under 49 U.S.C. Chapter 331. Since four years have passed since 2001, under the Adjustment Act, we are now adjusting these civil penalties for inflation.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures and has determined that it is not significant. This action is limited to the adoption of statutorily mandated adjustments of civil penalties under statutes that the agency enforces, raises no novel issues, and does not otherwise interfere with other actions. This final rule does not impose any costs that would exceed the $100 million threshold or otherwise materially impact entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The agency has therefore determined this final rule to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b).

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification (''SIC'') Codes. SIC Code 336211 ''Motor Vehicle Body Manufacturing'' applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American

Industry Classification System (''NAICS''), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.[1]

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapters 327 (odometer disclosure and tampering) and, to a lesser extent, 331 (vehicle theft protection). Consequently, these entities may be affected by the adjustments that this rule makes. For example, based on comprehensive reporting pursuant to the early warning reporting (''EWR'') rule under the Motor Vehicle Safety Act, 49 CFR part 579, of the more than 60 light vehicle manufacturers reporting, over half are small businesses. Also, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. Furthermore, there are about 130 registered importers.

As noted throughout this preamble, this rule only increases the maximum penalty amounts that the agency could obtain for violations of provisions related to the odometer and theft protection provisions enforced by NHTSA. The rule does not set the amount of penalties for any particular violation or series of violations. Under the vehicle theft protection statute, the penalty provision requires the agency to take into account the size of a business when determining the appropriate penalty in an individual case. *See* 49 U.S.C. 33115(a)(3) (vehicle theft protection—entity's size shall be considered). While the odometer disclosure and tampering statutory penalty provision does not specifically require the agency to consider the size of the business, the statute requires the agency to consider the impact of the penalty on an entity's ability to continue doing business. 49 U.S.C. 32709(a)(3)(B). The agency would also consider business size under its civil penalty policy when determining the appropriate civil penalty amount. *See* 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (''SBREFA'')). The penalty adjustments in the rule would not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Since this regulation does not establish penalty amounts, the rule will not have a significant economic impact on small businesses.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

We have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12988 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995. This rulemaking action will not impose any filing or record keeping requirements on any manufacturer or any other party.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 578

Motor vehicle safety, Penalties.

[1] For example, according to the new SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. See *http://www.sba.gov/size/sizetable.pdf* for further details.

■ In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for 49 CFR part 578 continues to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 106–414, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

■ 2. Section 578.6 is amended by revising, in paragraph (f)(1), the third sentence; revising, in paragraph (g)(1), the third sentence; and revising paragraph (g)(2), to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

* * * * *

(f) *Odometer tampering and disclosure.* (1) * * * The maximum civil penalty under this paragraph for a related series of violations is $130,000.

* * * * *

(g) *Vehicle theft protection.* (1) * * * The maximum penalty under this paragraph for a related series of violations is $325,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than $130,000 a day for each violation.

* * * * *

Issued on: September 1, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–17747 Filed 9–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040809233–4363–03; I.D. 083105A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area I Scallop Access Area to General Category Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Closed Area I (CAI) Scallop Access Area for general category scallop vessels for the remainder of the 2005 fishing year (through February 28, 2006). This closure is based on a determination by the Northeast Regional Administrator (RA) that general category scallop vessels will have made all of the 162 allowed trips by 0001 hr local time September 8, 2005. This action is being taken to prevent the allocation of general category trips in CAI Scallop Access Area from being exceeded during the 2005 fishing year in accordance with the regulations implemented under Framework 16 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework 39 to the Northeast Multispecies FMP (Joint Frameworks) and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective 0001 hr local time September 8, 2005, through February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the Sea Scallop Access Areas are found at 50 CFR 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the CAI Scallop Access Area are specified at ' 648.59(b)(5)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the CAI Scallop Access Area under specific conditions, including a cap of 162 trips to be made by general category vessels during the 2005 fishing year. The regulations at ' 648.59(b)(5)(ii) require the RA to close the CAI Scallop Access Area to general category scallop vessels once the RA has determined that the allowed number of trips are projected to be taken.

As of August 26, 2005, 136 trips had been completed by general category scallop vessels fishing in the CAI Scallop Access Area. Based on VMS trip declarations and analysis of fishing effort, a projection concluded that, given current activity levels by general category scallop vessels in the area, the trip cap would be attained by September 8, 2005. Therefore, in accordance with the regulations at 50 CFR 648.59(b)(5)(ii), this action closes the CAI Scallop Access Area to all general category scallop vessels as of 0001 hr local time September 8, 2005. This closure is in effect for the remainder of the 2005 fishing year, which ends February 28, 2006. The CAI Scallop Access Area is scheduled to re-open to scallop fishing, including trips for general category scallop vessels, on June 15, 2006, unless the schedule for Scallop Access Areas is modified by the New England Fishery Management Council.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment because it is impracticable and contrary to the public interest. The regulations at ' 648.59(b)(5)(ii) require the RA to close the CAI Scallop Access Area to general category scallop vessels to ensure that general category scallop vessels do not take more than the allocated number of trips in the Scallop Access Area. Data only recently became available indicating that the allocated trips will be taken by September 8, 2005. Allowing general category vessels to continue to take trips in the CAI Scallop Access Area after September 8, 2005, would result in vessels taking more than the allowed number of trips in the CAI Scallop Access Area, and in the localized over-harvest of the scallop resource. Such overharvest would likely reduce the projected levels of fishing activity within the CAI Scallop Access Area in future years for both general category and limited access scallop vessels. This conflicts with the agency's obligation to achieve the objectives of the FMP and to implement its measures in an effective manner. Based on the foregoing, the AA finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for this action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17801 Filed 9–2–05; 2:32 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 090205A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2005 total allowable catch (TAC) of pollock for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2005, through 1200 hrs, A.l.t., October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2005 TAC of pollock in Statistical Area 610 of the GOA is 10,155 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season pollock allowance by 395 mt, the remaining amount of the A and B season allowance of the pollock TAC in Statistical Area 610. The revised C season allowance of the pollock TAC in Statistical Area 610 is therefore 10,550 mt (10,155 mt plus 395 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2005 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,500 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of August 31, 2005.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17800 Filed 9–2–05; 2:32 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska

CFR Correction

In Title 50 of the Code of Federal Regulations, part 600 to end, revised as of October 1, 2004, § 679.22 is corrected by reinstating paragraph (b)(5) as follows:

§ 679.22 Closures.

* * * * *

(b) * * *

(5) *Sitka Pinnacles Marine Reserve.* (i) No vessel required to have a Federal fisheries permit under § 679.4(b) may fish for groundfish or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

(ii) No vessel required to have on board an IFQ halibut permit under § 679.4(d) may fish for halibut or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

[FR Doc. 05–55510 Filed 9–7–05; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 70, No. 173
Thursday, September 8, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 04–083–2]

Add Argentina to the List of Regions Considered Free of Exotic Newcastle Disease; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: In a proposed rule published in the **Federal Register** on August 23, 2005 (Docket No. 04–083–1), we proposed to amend the regulations by adding Argentina to the list of regions considered free of exotic Newcastle disease (END) and announced the availability of a qualitative evaluation regarding the END status of Argentina. The proposed rule contained an incorrect Internet address and incomplete instructions on how to access the qualitative evaluation. This document corrects those errors.

DATES: We will consider all comments that we receive on Docket No. 04–083–1 on or before October 24, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate Docket No. 04–083–1.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–083–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–083–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read the qualitative evaluation and any comments that we receive on Docket No. 04–083–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. David Nixon, Case Manager, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION: On August 23, 2005, we published in the **Federal Register** (70 FR 49200–49207, Docket No. 04–083–1) a proposed rule in which we proposed to amend the regulations in 9 CFR part 94 by adding Argentina to the list of regions considered free of exotic Newcastle disease (END) and announced the availability of a qualitative evaluation regarding the END status of Argentina. The evaluation documents the factors that have led us to conclude that commercial poultry in Argentina are END-free. We are making the proposed rule and the qualitative evaluation available for public comment for 60 days. Comments must be received on or before October 24, 2005.

In the background portion of the proposed rule, we provided an Internet address where the evaluation could be viewed. This address was incorrect. The Internet address should have read: *http://www.aphis.usda.gov/vs/ncie/reg-request.html.* In addition, the instructions we provided for accessing the evaluation were incomplete. This document corrects those errors.

Correction

In FR Doc. 05–16689, published on August 23, 2005 (70 FR 49200–49207), make the following correction: On page 49205, first column, third full paragraph, in the first sentence, correct *http://www.aphis.usda.gov/vs/reg-request.html* by following the link for current requests and supporting documentation to read *http://www.aphis.usda.gov/vs/ncie/reg-request.html.* At the bottom of that Web site page, follow the link for ''Information previously submitted by Regions requesting export approval and supporting documentation.'' At the next screen, click on the triangle beside ''Argentina/ Poultry Products/Exotic Newcastle Disease.'' From that screen, you may click on the triangle beside ''Response by APHIS'' to view the qualitative evaluation and the triangle beside ''Information supporting request'' to view information provided by Argentine veterinary officials. You may also view the evaluation in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document)''.

Done in Washington, DC, this 1st day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–17799 Filed 9–7–05; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

RIN 3150–AH68

Implementation of a Dose Standard After 10,000 Years

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the disposal of high-level radioactive wastes in a proposed geologic repository at Yucca Mountain, Nevada. The proposed rule would implement the U.S. Environmental Protection Agency's (EPA's) proposed standards for doses that could occur after 10,000 years but within the period of geologic stability. The proposed rule also specifies a value to be used to represent climate change

after 10,000 years, as called for by EPA, and specifies that calculations of radiation doses for workers use the same weighting factors that EPA is proposing for calculating individual doses to members of the public.

DATES: The comment period expires November 7, 2005. Comments received after this date will be considered if it is practical to do so, but NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH68) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7285, e-mail *tjm3@nrc.gov;* Janet Kotra, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6674, e-mail *jpk@nrc.gov;* or Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2001 (66 FR 55732), NRC published its final rule, 10 CFR part 63, governing disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. The U.S. Department of Energy (DOE) must comply with these regulations for NRC to authorize construction and license operation of a potential repository at Yucca Mountain. As mandated by the Energy Policy Act of 1992, Public Law 102–486 (EnPA), NRC's final rule was consistent with the radiation protection standards issued by EPA at 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA developed these standards under Congress' direction, in Section 801 of EnPA, to issue public health and safety standards for protection of the public from releases of radioactive materials stored or disposed of in a potential repository at the Yucca Mountain site. These standards were to be ''based upon and consistent with'' the findings and recommendations of the National Academy of Sciences (NAS). The NAS issued its findings and recommendations, on August 1, 1995, in a report entitled Technical Bases for Yucca Mountain Standards.

The State of Nevada and other petitioners challenged both the EPA standards and the NRC regulations in court. On July 9, 2004, the United States Court of Appeals for the District of Columbia Circuit upheld both EPA's standards and NRC's regulations on all but one of the issues raised by the petitioners. See *Nuclear Energy Institute, Inc.* v. *Environmental Protection Agency*, 373 F.3d 1251 (D.C. Cir. 2004). The court disagreed with EPA's decision to adopt a 10,000-year period for compliance with the standards and NRC's adoption of that 10,000-year compliance period in NRC's implementing regulations. The court found that EPA's 10,000-year compliance period was not ''based upon and consistent with'' NAS findings, as required by Section 801 of EnPA. See the aforementioned 373 F.3d at 1270. The NAS recommended that a standard be developed that would provide protection when radiation doses reach their peak within the limits imposed by long-term stability of the geologic environment. In addition, NAS found no scientific basis for limiting application of the individual-risk standard to 10,000 years. Thus, the court vacated EPA's rule at 40 CFR part 197 to the extent that it specified a 10,000-year compliance period and remanded the matter to EPA. The court also vacated NRC's rule at 10 CFR Part 63 insofar as it incorporated EPA's 10,000-year compliance period.

In response to the remand, EPA issued its proposed revised standards on August 22, 2005 (70 FR 49014). To comply with EnPA and the court's remand, NRC must now revise 10 CFR Part 63 to be consistent with EPA's revised standards. For that purpose, NRC is proposing revisions to 10 CFR part 63 in this notice.

II. Discussion

To address the court's decision, EPA is retaining the standards applicable to the first 10,000 years after disposal and proposes to add separate requirements for the peak dose after 10,000 years and within the period of geologic stability. EPA also proposes to revise the approach for calculating doses, based on International Commission on Radiological Protection (ICRP) recommendations, for the periods before and after 10,000 years. Specifically, EPA's proposed revisions to its standards: (1) Provide a limit for the peak dose after 10,000 years; (2) specify criteria DOE must use in performance assessments for estimating doses after 10,000 years; and (3) specify ''weighting factors'' for DOE's use when calculating individual dose during the operational or preclosure phase as well as after the disposal or postclosure phase. Also, in its proposal, EPA states that NRC should specify a value or values that DOE must use to represent climate change after 10,000 years.

In this rulemaking, the NRC proposes to (1) adopt the limit EPA sets for the peak dose after 10,000 years; (2) adopt the criteria EPA has specified for performance assessments that estimate

doses after 10,000 years; (3) adopt the ''weighting factors'' EPA specifies for calculating individual doses during the operational or preclosure phase, as well as after the disposal or postclosure phase; (4) require that calculations of radiation doses for workers use the same weighting factors EPA is proposing for calculating individual dose; and (5) specify a value that DOE must use to project the long-term impact of climate variation after 10,000 years, as called for by EPA. These proposals are more fully described below.

The NRC's proposal of these changes to part 63 coincides with EPA's publication of its proposal to provide important and timely information to the public on how NRC plans to incorporate and implement EPA's standards in NRC's regulations. In general, the changes to part 63 adopt the same or approximately the same wording as used by EPA in its proposed revisions to 40 CFR part 197. Comments on EPA's proposal (*e.g.*, the dose limit) should be directed to EPA and refer to EPA's proposal published on August 22, 2005. NRC's existing regulations, which are applicable for the first 10,000 years after disposal, remain in place [*e.g.*, the 0.15 millisieverts/year (15 millirem/year) individual protection standard] consistent with the existing EPA standards, and are not affected by this rulemaking except insofar as NRC's rule adopts more up-to-date dosimetry for dose calculations.

The Commission welcomes comments on NRC's proposed implementation of EPA's proposed revisions to its standards as well as on NRC's revisions for use of specific weighting factors for calculating worker doses, and on NRC's specification of a value for climate change. NRC requests and will respond to comments only on those provisions of part 63 that we are now proposing to change. A description of these changes follows.

1. Dose Limit

EPA's proposed standards would require DOE to estimate peak dose after 10,000 years as part of the evaluations for both individual protection and human intrusion. DOE must then compare the results of these estimates to an annual dose limit of 3.5 mSv/yr (350 mrem/yr). For this comparison, EPA proposes that DOE use the median value of the projected doses after 10,000 years and through the period of geologic stability. NRC proposes to incorporate the new EPA dose limit and statistical measure for compliance directly into NRC's regulations at § 63.311 for individual protection and at § 63.321 for human intrusion.

2. Criteria for Performance Assessments Used to Estimate Peak Dose After 10,000 Years

EPA proposes using the performance assessment for the first 10,000 years as the basis for projecting repository performance after 10,000 years. EPA asserts that its requirements for the performance assessment for the first 10,000 years (*e.g.*, consideration for features, events, and processes with a probability of occurrence greater than 10^{-8} per year) provide a suitable basis for projecting performance after 10,000 years. NRC's existing regulations at 10 CFR Part 63 already include additional requirements, governing the preparation of the performance assessment, that ensure that features, events, and processes considered for inclusion in the performance assessment over the 10,000-year compliance period represent a wide range of both favorable and detrimental effects on performance.

Because of the uncertainties associated with estimating performance over very long times (*e.g.*, hundreds of thousands of years) and to limit speculation, EPA proposes specific constraints on the consideration of features, events, and processes after 10,000 years. First, EPA asserts that data and models used to prepare the performance assessment for the first 10,000 years provide adequate support for projections used in the performance assessment after 10,000 years. For example, DOE may apply the seismic hazard curves used in the 10,000-year assessment to project seismic activity after 10,000 years. Second, EPA proposes to (1) limit the analysis of seismic activity to the effects caused by damage to the drifts and the waste package; (2) limit analysis of igneous activity to effects on the waste package that result in release of radionuclides to the atmosphere or ground water; (3) limit the effect of climate variation to those resulting from increased water flowing to the repository; and (4) require DOE to include general corrosion in its analysis of engineered barrier performance. NRC proposes to incorporate these criteria into NRC regulations at § 63.342. NRC also proposes revising requirements for the performance assessment, specified at § 63.114, to be consistent with EPA's proposal that the performance assessment for the first 10,000 years serve as the basis for projecting repository performance assessment after 10,000 years.

3. Individual Dose Calculations

EPA proposes that DOE use specific weighting factors provided in proposed Appendix A of its standards at 40 CFR 197. These weighting factors reflect current methods of dosimetry and updated models for calculating individual exposures from radiation. EPA cites, as a basis for this proposal, recommendations and guidance from ICRP Publications 60 through 72. NRC supports the use of current dosimetry and proposes to adopt this specification.

4. Worker Dose Calculations

Consistent with EPA's specification of dosimetry for calculating individual doses to members of the public (public doses), NRC proposes to revise its part 63 regulations to allow DOE to use the same methods for calculating doses to workers during the operational period as those required for calculating public doses. NRC believes that calculations of doses to workers and the public should rely on a single set of weighting factors, based on current dosimetry. This approach would avoid the unnecessary complication and potential confusion for stakeholders that could result from the use of two sets of weighting factors. NRC proposes to add a definition for ''weighting factor'' to § 63.2 that specifies the weighting factors provided in the EPA proposal, and to amend § 63.111(a)(1) to provide that calculation of doses to meet the requirements of 10 CFR part 20 shall use the definition for ''weighting factor'' in § 63.2. Calculation of both worker and public doses would use the weighting factor as defined.

5. Values Used To Project Climate Variation After 10,000 Years

EPA proposes that DOE should assume that the effect of climate variation, after 10,000 years, is limited to the results of increased water flowing through the repository. EPA also proposes that NRC specify, in regulation, steady-state (constant-in-time) values that DOE should use to project the long-term impact of climate variation after 10,000 years. This approach focuses on ''average'' climate conditions over the long term rather than on time-varying aspects of climate (*e.g.*, timing, size, and duration of short-term variations) that can be both uncertain and speculative. The NRC has considered what parameter or parameters would represent the average climate conditions. Precipitation and temperature are the most readily identified parameters, associated with climate, that directly influence the amount of water, or deep percolation, flowing to the repository horizon. It is the rate of deep percolation, however, that directly influences repository performance. Therefore, the NRC proposes to specify use of the deep

percolation rate to represent the effect of future climate in performance assessments after 10,000 years.

Southern Nevada has experienced significant variation in mean annual precipitation and temperature over the past 1 to 3 million years (Forester, R. M. ''Pliocene-Climate History of the Western United States Derived from Lacustrine Ostracodes,'' Quaternary Science Reviews, Volume 10, pages 133–146, 1991). Estimates of future climate over the next 1 million years involve many assumptions and are uncertain. One approach, discussed when NRC issued its regulations for Yucca Mountain at 10 CFR part 63 (page 66 FR 55757; November 2, 2001), is to assume that fundamental mechanisms that will change the future climate will be the same as those that changed it in the past. Paleoclimate data suggest that, in general, over the past 1 million years, Southern Nevada has been cooler and wetter than it is today (Thompson, R. S., K. H. Anderson, and P. J. Bartlein, ''Quantitative Paleoclimatic Reconstructions from Late Pleistocene Plant Macrofossils of the Yucca Mountain Region,'' U.S. Geological Survey Open-File Report 99–338, U.S. Geological Survey, Denver, CO, 1999; and Reheis, M., ''Highest Pluvial Lake Shorelines and Pleistocene Climate in the Western Great Basin,'' *Quaternary Research,* Volume 52, pages 196–205, 1999). Thus, NRC expects ''average'' conditions 10,000 years in the future, and later, to be cooler and wetter. Those conditions will allow more water to percolate to the repository horizon than expected during the first 10,000 years.

According to climatologists, the so-called intermediate and monsoon climate states, which occur between the warmer ''interglacial'' and the cooler ''full glacial'' climate states, are both wetter than the present climate state. Climatologists estimate a mean annual precipitation, during these climate states, at about twice that of present mean annual precipitation at Yucca Mountain. Over the past million years, these two wetter climate states were the predominate climate states (Civilian Radioactive Waste Management System, Management and Operating Contractor, ''Future Climate Analysis—10,000 years to 1,000,000 Years After Present,'' MOD–01–001 Rev. 00, 2002). To the extent that climate is controlled by changes in solar radiation arising from variations in the Earth's orbit [op. cit.], it is reasonable to assume that climate patterns during the next 1 million years would follow a similar cycle. Deep percolation rates depend on both precipitation and temperature and their associated effects on evaporation and plant transpiration. Today, the mean precipitation, measured at Yucca Mountain, is 125 millimeters/year (mm/year) (4.9 inches/year) (Thompson, R. S., K. H. Anderson, and P. J. Bartlein, ''Quantitative Paleoclimatic Reconstructions from Late Pleistocene Plant Macrofossils of the Yucca Mountain Region,'' U.S. Geological Survey Open-File Report 99–338, U.S. Geological Survey, Denver, CO, 1999). About 4 percent of that water reaches the repository horizon. This corresponds to an estimated deep percolation rate of 5 mm/year (0.20 inches/year) when averaged over the repository footprint (Zhu, C., J. R. Winterle, and E. I. Love, ''Late Pleistocene and Holocene Groundwater Recharge from the Chloride Mass Balance Method and Chlorine-36 Data,'' Water Resources Research, Vol 39, No. 7, page 1182, 2003). Examination of locations in the United States, analogous to Yucca Mountain in some future intermediate and monsoon climates, suggests potential precipitation rates of between 266 and 321 mm/year [10.5 and 12.6 inches/year] (Thompson, R. S., K. H. Anderson, and P. J. Bartlein, ''Quantitative Paleoclimatic Reconstructions from Late Pleistocene Plant Macrofossils of the Yucca Mountain Region,'' U.S. Geological Survey Open-File Report 99–338, U.S. Geological Survey, Denver, CO, 1999).

Estimates of deep percolation rate as a fraction of precipitation have been calculated for various climate conditions. Between 5 to 20 percent of precipitation could reach the repository depth under intermediate/monsoon to ''full glacial'' climate conditions. The larger percentage reflects ''full glacial'' conditions (Mohanty, S., R. Codell, J. M. Menchaca, et al., *System-Level Performance Assessment of the Proposed Repository at Yucca Mountain Using the TPA Version 4.1 Code,* CNWRA 2002–05 Revision 2, Center for Nuclear Waste Regulatory Analyses, San Antonio, TX, 2004). Given that average deep percolation at Yucca Mountain is about 4 percent of precipitation, under current conditions, and assuming between 5 to 20 percent for the fraction of precipitation that remains as deep percolation under intermediate/monsoon climates, one may estimate higher average water flow to the repository than observed today. On this basis, the NRC proposes that DOE represent the effects of climate change after 10,000 years by assuming that deep percolation rates vary between 13 to 64 mm/year (0.5 to 2.5 inches/year) [1]. DOE would implement this assumption in its performance assessment by sampling values of deep percolation rates within this range, and, for a given calculation, by assuming the deep percolation rate remained constant, at the sampled rate, after 10,000 years.

Thus, NRC proposes that DOE use a time-independent deep percolation rate, after 10,000 years, based on a log uniformly distributed range of deep percolation rates from 13 to 64 mm/year (0.5 to 2.5 inches/year). This ''average'' deep percolation rate represents the average amount of water flowing to the repository horizon. Specifying a rate that is constant over time, however, does not imply that this same rate should necessarily be held constant spatially over the entire repository horizon. To the contrary, current understanding of site behavior (*e.g.*, NRC staff and DOE staff representations of infiltration and percolation processes at Yucca Mountain) shows significant variation in current deep percolation rates across the repository horizon. This would be expected to continue to occur into the far future. NRC expects DOE to continue such calculations of spatial variation, subject to the constraint that, across the repository footprint, the ''average'' overall percolation rate would remain within the range and distribution specified by NRC.

The Commission considers it appropriate to specify these constraints on how DOE must account for the effects of climate change during the period after 10,000 years because this approach: (1) Is consistent with EPA's proposal for treatment of climate change after 10,000 years; (2) specifies, in a straightforward way, how DOE shall represent climate change in its performance assessment; (3) results in a mean deep percolation rate of approximately 32 mm/year [2] (1.3 inches/year), a rate that is approximately six times greater than the current rate, representing wetter and cooler conditions (*e.g.*, interglacial and monsoon climate states); and (4) provides information on the relative significance of the deep percolation rate

[1] The low value of the range is derived using the lower estimated fraction of precipitation that results in deep percolation and the lower precipitation rate (*i.e.*, 5 percent of 266 is approximately 13) and the high value of the range from using the higher estimated fraction of precipitation that results in deep percolation and the higher value for precipitation rate (*i.e.*, 20 percent of 321 is approximately 64).

[2] The mean value of a log-uniform distribution of deep percolation that ranges from 13 mm/year to 64 mm/yr is equal to (64 mm/year − 13 mm/year)/[$\log_e$(64 mm/year) − $\log_e$(13 mm/year)] = 32 mm/year.

(*e.g.*, results of the performance assessment when the deep percolation rate is assumed to be at the low value of the range versus the high value of the range).

III. Discussion of Proposed Amendments by Section

Section 63.2s Definitions

This section would be modified to revise the definition of ''performance assessment'' to exclude the limitation of ''10,000 years after disposal,'' consistent with EPA's modified definition of ''performance assessment.'' This section also would be modified to include a definition for ''weighting factor'' that conforms the weighting factors to be used in dose calculations to the values EPA proposes.

Section 63.111 Performance Objectives for the Geologic Repository Operations Area Through Permanent Closure

This section specifies requirements for radiation exposures for the geologic repository operations area. This section would be modified to require use of the definition for ''weighting factor'' in § 63.2 when calculating doses to meet the requirements of part 20 of this chapter.

Section 63.114 Requirements for Performance Assessment

This section specifies the requirements for the performance assessment used to demonstrate compliance with the requirements specified at § 63.113(b), (c), and (d). This section would be revised to conform to EPA's proposed standards that specify what DOE must consider in the performance assessment for the period after 10,000 years.

Section 63.302 Definitions for Subpart L

The definition for the ''period of geologic stability'' would be modified to clarify that this period ends at 1 million years after disposal.

Section 63.303 Implementation of Subpart L

This section provides a functional overview of this subpart. This section would be revised to conform to EPA's proposed standard that specifies the arithmetic mean of the projected doses to be used for determining compliance for the period within 10,000 years after disposal and the median value of the projected doses to be used for determining compliance for the period after 10,000 years and through the period of geologic stability.

Section 63.305 Required Characteristics of the Reference Biosphere

This section specifies characteristics of the reference biosphere to be used by DOE in its performance assessments to demonstrate compliance with the requirements specified at § 63.113. This section would be modified to conform to EPA's proposed standards, which specify the types of changes DOE shall account for in the performance assessment for the period after 10,000 years and through the period of geologic stability.

Section 63.311 Individual Protection Standard After Permanent Closure

This section specifies the dose limit for individual protection after permanent closure for any geologic repository at the Yucca Mountain site. This section would be modified to conform with the public health and environmental radiation standards EPA proposes for the peak dose after 10,000 years and through the period of geologic stability.

Section 63.321 Individual Protection Standard for Human Intrusion

This section directs DOE to estimate the dose resulting from a stylized human intrusion drilling scenario and specifies the dose limit that any geologic repository at the Yucca Mountain site must meet as the result of a hypothetical human intrusion. This section would be modified to conform with the public health and environmental radiation standards EPA proposes for the peak dose after 10,000 years and through the period of geologic stability.

Section 63.341 Projections of Peak Dose

This section has been removed.

Section 63.342 Limits on Performance Assessments

This section specifies how DOE will identify and consider features, events, and processes in the dose assessments described in subpart L to part 63. This section would be modified to conform to EPA's proposed standards, which specify the types of changes DOE shall account for in the performance assessment for the period after 10,000 years and through the period of geologic stability. A range of values has been specified that DOE shall use to represent the effects of climate change after 10,000 years and through the period of geologic stability.

IV. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. An Agreement State may not adopt program elements reserved to NRC.

V. Plain Language

The Presidential memorandum, dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading of **ADDRESSES,** above.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, NRC would implement site-specific standards proposed by EPA and developed solely for application to a proposed geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VII. Finding of No Significant Environmental Impact: Availability

Pursuant to Section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of Section 102(2) of such act.

VIII. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0199.

Public Protection Notification

NRC may not conduct nor sponsor, and a person is not required to respond to, a request for information nor an information collection requirement, unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission, consistent with the options that are open to NRC in carrying out the statutory directive of EnPA. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to NRC, as indicated under the **ADDRESSES,** heading. The analysis is available for inspection in the NRC PDR, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the regulatory analysis may be obtained from Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov*.

X. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], NRC certifies that this proposed rule will not, if issued, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing of one entity, DOE, which does not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act nor the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

XI. Backfit Analysis

NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits, as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 63.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat.1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141); and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 stat. 2750 (44 U.S.C. 3504 note).

2. Section 63.2 is amended by revising paragraph (1) of the definition of ''performance assessment'' and by adding a new definition for ''weighting factor,'' in alphabetical order, to read as follows:

§ 63.2 Definitions.

* * * * *

Performance assessment means an analysis that:

(1) Identifies the features, events, processes (except human intrusion), and sequences of events and processes (except human intrusion) that might affect the Yucca Mountain disposal system and their probabilities of occurring;

* * * * *

Weighting factor for an organ or tissue is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values in Appendix A of 40 CFR part 197 are to be used.

3. In § 63.111, paragraph (a)(1) is revised to read as follows:

§ 63.111 Performance objectives for the geologic repository operations area through permanent closure.

(a) * * *

(1) The geologic repository operations area must meet the requirements of part 20 of this chapter. Calculation of doses to meet the requirements of part 20 of this chapter shall use the definition for ''weighting factor'' in § 63.2.

* * * * *

4. Section 63.114 is revised to read as follows:

§ 63.114 Requirements for performance assessment.

(a) Any performance assessment used to demonstrate compliance with § 63.113 for 10,000 years after disposal must:

(1) Include data related to the geology, hydrology, and geochemistry (including disruptive processes and events) of the Yucca Mountain site, and the surrounding region to the extent necessary, and information on the design of the engineered barrier system used to define, for 10,000 years after disposal, parameters and conceptual models used in the assessment.

(2) Account for uncertainties and variabilities in parameter values, for 10,000 years after disposal, and provide for the technical basis for parameter ranges, probability distributions, or bounding values used in the performance assessment.

(3) Consider alternative conceptual models of features and processes, for 10,000 years after disposal, that are consistent with available data and current scientific understanding and evaluate the effects that alternative conceptual models have on the performance of the geologic repository.

(4) Consider only features, events, and processes consistent with the limits on performance assessment specified at § 63.342.

(5) Provide the technical basis for either inclusion or exclusion of specific features, events, and processes in the performance assessment. Specific features, events, and processes must be evaluated in detail if the magnitude and time of the resulting radiological exposures to the reasonably maximally exposed individual, or radionuclide releases to the accessible environment, for 10,000 years after disposal, would be significantly changed by their omission.

(6) Provide the technical basis for either inclusion or exclusion of degradation, deterioration, or alteration processes of engineered barriers in the performance assessment, including those processes that would adversely affect the performance of natural barriers. Degradation, deterioration, or alteration processes of engineered barriers must be evaluated in detail if the magnitude and time of the resulting radiological exposures to the reasonably maximally exposed individual, or radionuclide releases to the accessible

environment, for 10,000 years after disposal, would be significantly changed by their omission.

(7) Provide the technical basis for models used to represent the 10,000 years after disposal in the performance assessment, such as comparisons made with outputs of detailed process-level models and/or empirical observations (*e.g.*, laboratory testing, field investigations, and natural analogs).

(b) Any performance assessment used to demonstrate compliance with § 63.113 for the period of time after 10,000 years through the period of geologic stability must be based on the performance assessment specified in paragraph (a) of this section.

5. In Section 63.302, the definition of ''period of geologic stability'' is revised to read as follows:

§ 63.302 Definitions for Subpart L.

* * * * *

Period of geologic stability means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities. This period is defined to end at 1 million years after disposal.

* * * * *

6. Section 63.303 is revised to read as follows:

§ 63.303 Implementation of Subpart L.

(a) Compliance is based upon the arithmetic mean of the projected doses from DOE's performance assessments for the period within 10,000 years after disposal for:

(1) § 63.311(a)(1); and

(2) §§ 63.321(b)(1) and 63.331, if performance assessment is used to demonstrate compliance with either or both of these sections.

(b) Compliance is based upon the median of the projected doses from DOE's performance assessments for the period after 10,000 years of disposal and through the period of geologic stability for:

(1) § 63.311(a)(2); and

(2) § 63.321(b)(2), if performance assessment is used to demonstrate compliance.

7. Section 63.305, paragraph (c) is revised to read as follows:

§ 63.305 Required characteristics of the reference biosphere.

* * * * *

(c) DOE must vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions consistent with present knowledge of factors that could affect the Yucca Mountain disposal system during the period of geologic stability and consistent with the requirements for performance assessments specified at § 63.342.

* * * * *

8. Section 63.311 is revised to read as follows:

§ 63.311 Individual protection standard after permanent closure.

(a) DOE must demonstrate, using performance assessment, that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than the following annual dose from releases from the undisturbed Yucca Mountain disposal system:

(1) 0.15 mSv (15 mrem) for 10,000 years following disposal; and

(2) 3.5 mSv (350 mrem) after 10,000 years, but within the period of geologic stability.

(b) DOE's performance assessment must include all potential environmental pathways of radionuclide transport and exposure.

9. Section 63.321 is revised to read as follows:

§ 63.321 Individual protection standard for human intrusion.

(a) DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion (see § 63.322) could occur without recognition by the drillers.

(b) DOE must demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives, as a result of human intrusion, no more than the following annual dose:

(1) 0.15 mSv (15 mrem) for 10,000 years following disposal; and

(2) 3.5 mSv (350 mrem) after 10,000 years, but within the period of geologic stability.

(c) DOE's analysis must include all potential environmental pathways of radionuclide transport and exposure, subject to the requirements at § 63.322.

§ 63.341 [Removed]

10. Section 63.341 is removed.

11. Section 63.342 is revised to read as follows:

§ 63.342 Limits on performance assessments.

(a) DOE's performance assessments conducted to show compliance with §§ 63.311(a)(1), 63.321(b)(1), and 63.331 shall not include consideration of very unlikely features, events, or processes, *i.e.*, those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal (less than one chance in 100,000,000 per year). In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly in the initial 10,000 year period after disposal.

(b) For performance assessments conducted to show compliance with §§ 63.321(b) and 63.331, DOE's performance assessments shall exclude the unlikely features, events, and processes, or sequences of events and processes, *i.e.*, those that are estimated to have less than one chance in 10 and at least one chance in 10,000 of occurring within 10,000 years of disposal (less than one chance in 100,000 per year and at least one chance in 100,000,000 per year).

(c) For performance assessments conducted to show compliance with §§ 63.311(a)(2) and 63.321(b)(2), DOE's performance assessments shall project the continued effects of the features, events, and processes included in paragraph (a) of this section beyond the 10,000 year post-disposal period through the period of geologic stability. DOE must evaluate all of the features, events, or processes included in paragraph (a) of this section, and also:

(1) DOE must assess the effects of seismic and igneous scenarios subject to the probability limits in paragraph (a) of this section for very unlikely features, events, and processes. Performance assessments conducted to show compliance with § 63.321(b)(2) are also subject to the probability limits in paragraph (b) of this section for unlikely features, events, and processes.

(i) The seismic analysis may be limited to the effects caused by damage to the drifts in the repository and failure of the waste package.

(ii) The igneous analysis may be limited to the effects of a volcanic event directly intersecting the repository. The igneous event may be limited to that causing damage to the waste packages directly, causing releases of radionuclides to the biosphere, atmosphere, or ground water.

(2) DOE must assess the effects of climate change. The climate change analysis may be limited to the effects of increased water flow through the repository as a result of climate change, and the resulting transport and release of radionuclides to the accessible environment. The nature and degree of climate change may be represented by constant climate conditions. The analysis may commence at 10,000 years after disposal and shall extend to the

period of geologic stability. The constant value to be used to represent climate change is to be based on a log-uniform probability distribution for deep percolation rates from 13 to 64 mm/year (0.5 to 2.5 inches/year).

(3) DOE must assess the effects of general corrosion on the engineered barriers. DOE may use a constant representative corrosion rate throughout the period of geologic stability or a distribution of corrosion rates correlated to other repository parameters.

Dated at Rockville, Maryland, this 1st day of September, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–17778 Filed 9–7–05; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1235]

Capital Adequacy Guidelines for Bank Holding Companies; Small Bank Holding Company Policy Statement; Definition of a Qualifying Small Bank Holding Company

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to raise the asset size threshold and revise the other criteria for determining whether a bank holding company (BHC) qualifies for the Board's Small Bank Holding Company Policy Statement (Regulation Y, Appendix C) (Policy Statement) and an exemption from the Board's risk-based and leverage capital adequacy guidelines for BHCs (Regulation Y, Appendices A and D) (Capital Guidelines). The proposal would increase the asset size threshold from $150 million to $500 million in consolidated assets for determining whether a BHC would qualify for the Policy Statement and an exemption from the Capital Guidelines; modify the qualitative criteria used in determining whether a BHC that is under the asset size threshold nevertheless would not qualify for the Policy Statement or the exemption from the Capital Guidelines; and clarify the treatment under the Policy Statement of subordinated debt associated with trust preferred securities.

DATES: Comments must be received no later than November 7, 2005.

ADDRESSES: You may submit comments, identified by Docket No. R–1235, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Barbara Bouchard, Deputy Associate Director (202/452–3072 or *barbara.bouchard@frb.gov*), Mary Frances Monroe, Manager (202/452–5231 or *mary.f.monroe@frb.gov*), William Tiernay, Supervisory Financial Analyst (202/872–7579 or *william.h.tiernay@frb.gov*), Supervisory and Risk Policy; Robert Maahs, Manager, Regulatory Reports (202/872–4935 or *robert.maahs@frb.gov*); or Robert Brooks, Supervisory Financial Analyst (202/452–3103 or *robert.brooks@frb.gov),* Applications, Division of Banking Supervision and Regulation; or Mark Van Der Weide, Senior Counsel (202/452–2263 or *mark.vanderweide@frb.gov*), Legal Division. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Board issued the Policy Statement in 1980 to facilitate the transfer of ownership of small community-based banks in a manner that is consistent with bank safety and soundness. The Board generally has discouraged the use of debt by BHCs to finance the acquisition of banks or other companies because high levels of debt at a BHC can impair the ability of the BHC to serve as a source of strength to its subsidiary banks. The Board has recognized, however, that small BHCs have less access to equity financing than larger BHCs and that, therefore, the transfer of ownership of small banks often requires the use of acquisition debt. Accordingly, the Board adopted the Policy Statement to permit the formation and expansion of small BHCs with debt levels that are higher than what would be permitted for larger BHCs. The Policy Statement contains several conditions and restrictions that are designed to ensure that small BHCs that operate with the higher levels of debt permitted by the Policy Statement do not present an undue risk to the safety and soundness of their subsidiary banks.

Currently, the Policy Statement applies to BHCs with pro forma consolidated assets of less than $150 million that (i) are not engaged in any nonbanking activities involving significant leverage; (ii) are not engaged in any significant off-balance sheet activities; and (iii) do not have a significant amount of outstanding debt that is held by the general public (''qualifying small BHCs''). Under the Policy Statement, qualifying small BHCs may use debt to finance up to 75 percent of the purchase price of an acquisition (that is, they may have a debt-to-equity ratio of up to 3:1), but are subject to a number of ongoing requirements. The principal ongoing requirements are that a qualifying small BHC (i) reduce its parent company debt in such a manner that all debt is retired within 25 years of being incurred; (ii) reduce its debt-to-equity ratio to .30:1 or less within 12 years of the debt being incurred; (iii) ensure that each of its subsidiary insured depository institutions is well capitalized; and (iv) refrain from paying dividends until such time as it reduces its debt-to-equity ratio to 1.0:1 or less. The Policy Statement also specifically provides that a qualifying small BHC may not use the expedited applications procedures or obtain a waiver of the stock redemption filing requirements applicable to BHCs under the Board's Regulation Y (12 CFR 225.4(b), 225.14, and 225.23) unless the BHC has a pro forma debt-to-equity ratio of 1.0:1 or less.

The Board adopted the risk-based capital guidelines in 1989 to assist in the assessment of the capital adequacy of BHCs. The risk-based capital guidelines establish for BHCs minimum ratios of tier 1 capital and total capital to risk-weighted assets. One of the Board's principal objectives in adopting

the risk-based capital guidelines was to make regulatory capital requirements more sensitive to differences in risk profiles among banking organizations. Supplemental to the risk-based capital guidelines, the Board in 1991 adopted the tier 1 leverage measure, a minimum ratio of tier 1 capital to total assets, to further assist in the assessment of the capital adequacy of BHCs with the principal objective of placing a constraint on the maximum degree to which a banking organization can leverage its equity capital base. Because qualifying small BHCs may, consistent with the Policy Statement, operate at a level of leverage that generally is inconsistent with the Capital Guidelines, the Capital Guidelines provide an exemption for qualifying small BHCs.

II. The Proposal

New Asset Threshold of $500 Million

When the Board issued the Policy Statement in 1980, $150 million in consolidated assets represented a reasonable threshold for identifying those BHCs that might need additional flexibility for the purpose of enabling the transfer of ownership of small community-based banks. However, over the last two decades, inflation, industry consolidation, and the normal asset growth of BHCs have caused the $150 million threshold to lose much of its relevance.

For these reasons, the Board proposes to increase the asset size threshold for qualifying small BHCs in the Policy Statement from $150 million to $500 million in pro forma consolidated assets. While approximately 55 percent of all top tier BHCs currently qualify for the Policy Statement, under this proposal that number would increase to 85 percent and would encompass approximately 4,400 BHCs. The Board notes that raising the threshold to $500 million, as proposed, goes well beyond the level (approximately $340 million) that would be appropriate to adjust the current threshold for inflation since the Board adopted the Policy Statement. The Board believes that raising the threshold to $500 million represents an appropriate balance between the goals of facilitating the transfer of ownership of small banks, on the one hand, and ensuring capital adequacy and access to necessary supervisory information on the other hand. The proposal also would make a conforming change to the asset size threshold in the Capital Guidelines.

The Board does not believe that raising the asset threshold above $500 million would be appropriate at this time. BHCs that have more than $500 million in consolidated assets typically have sufficient access to equity markets and other sources of funding to enable them to finance acquisitions with a lower proportion of debt-to-equity than smaller BHCs.

Other Criteria for Identifying a Qualifying Small BHC

As noted above, a BHC currently qualifies for the Policy Statement and is exempt from the Capital Guidelines only if the BHC falls below the asset threshold *and* (i) does not engage in any nonbanking activities involving significant leverage; (ii) does not engage in any significant off-balance sheet activities; and (iii) does not have a significant amount of outstanding debt that is held by the general public. The Board also is proposing to revise these qualitative criteria for determining whether a small BHC qualifies for the Policy Statement and generally is exempt from the Capital Guidelines.

Specifically, the Board proposes to amend these criteria to provide that a BHC with less than $500 million in consolidated assets does not qualify for the Policy Statement (and is subject to the Capital Guidelines) if the BHC (i) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) conducts significant off-balance sheet activities, including securitizations or managing or administering assets for third parties, either directly or through a nonbank subsidiary; or (iii) has a material amount of debt or equity securities (other than trust preferred securities) outstanding that are registered with the Securities and Exchange Commission (SEC). The proposal also would make conforming changes to the Capital Guidelines.

The Board expects that few BHCs with consolidated assets of less than $500 million would meet any of these criteria. In those cases where a BHC's management is uncertain whether the BHC meets any of these criteria, management should consult with the BHC's appropriate Reserve Bank.

The Board believes these changes to the eligibility criteria under the Policy Statement are necessary or appropriate to reflect changes in the banking industry over the last two decades, including the nature of operations of many small BHCs. The enactment of the Gramm-Leach-Bliley Act in 1999 expanded significantly the range of nonbanking activities in which BHCs may engage, both directly and through their nonbank subsidiaries. Therefore, the Board is proposing to revise the criteria so as to exclude from the Policy Statement any BHC that engages in significant nonbanking activities or off-balance sheet activities, either directly or through a nonbank subsidiary. The more limiting reference to significantly leveraged nonbanking activities would be deleted, since nonleveraged activities may also entail significant risk, such as operational risk. The examples provided—securitizations and managing or administering assets for third parties—highlight two areas of off-balance sheet activities that may involve substantially larger operations and risk than balance sheet measures would indicate. These examples are not intended to be exclusive and other activities may well present similar concerns. The revision of the final criterion to exclude from the Policy Statement any BHC that has outstanding a material amount of SEC-registered debt or equity securities reflects the fact that SEC registrants typically exhibit a degree of complexity of operations and access to multiple funding sources that warrants excluding them from the Policy Statement and subjecting them to consolidated capital requirements. Moreover, the application of consolidated reporting requirements to these BHCs should not impose significant additional burden, as they are required to have consolidated financial statements for SEC reporting purposes.

The Board is of the view that the amended criteria represent a prudent balance of its interest in expanding the Policy Statement treatment to a larger pool of small BHCs, while ensuring that larger and more complex BHCs remain well capitalized and continue to serve as a source of strength to their subsidiary banks.

In addition, the Board is proposing to amend the Policy Statement and the Capital Guidelines to make explicit the Federal Reserve's existing authority to require on a case by case basis that a qualifying small BHC maintain consolidated capital when such action is warranted for supervisory reasons.

In addition to the foregoing, a qualifying small BHC may voluntarily elect to comply with the Capital Guidelines.

Treatment of Subordinated Debt Associated With Trust Preferred Securities

The Policy Statement currently does not address the treatment of subordinated debt that is issued in connection with the issuance of trust preferred securities.[1] Currently, for

[1] Trust preferred securities are undated cumulative preferred securities issued out of a special purpose entity, usually in the form of a

Continued

purposes of the Policy Statement, such subordinated debt on the parent company balance sheet is not treated as debt; however, the cash-flow impact of the subordinated debt is included in the Board's review of the financial condition of a BHC. The Board is now proposing to clarify that subordinated debt associated with trust preferred securities would be considered debt for most purposes under the Policy Statement. In particular, such subordinated debt would be included as debt in determining whether (i) a qualifying small BHC's acquisition debt is 75 percent or less of the purchase price; or (ii) a qualifying small BHC's debt-to-equity ratio is greater than 1.0:1 (the ratio above which a qualifying small BHC is subject to dividend restrictions and is not permitted to use the expedited applications processing procedures or obtain a waiver of stock redemption filing requirements under Regulation Y).[2] However, in order to provide for more equitable treatment between qualifying small BHCs and larger BHCs that are subject to the Capital Guidelines,[3] a qualifying small BHC may exclude from debt an amount of subordinated debt associated with trust preferred securities equaling up to 25 percent of a small BHC's equity (as defined in the Policy Statement), less parent company goodwill in determining compliance with these requirements.

In addition, in order to give qualifying small BHCs sufficient time to conform their debt structures, the Board is proposing to provide for a five-year transition period during which subordinated debt associated with trust preferred securities issued on or prior to the publication date of this proposed rule would not be considered debt under the Policy Statement. Such a transition period generally would be consistent with the five-year transition period afforded to larger BHCs to meet the Board's risk-based capital guidelines with respect to trust preferred securities.[4] However, in the event that a qualifying small BHC issues additional subordinated debt associated with a new issuance of trust preferred securities after the date of this proposed rule, the temporary non-debt status of all the qualifying small BHC's existing subordinated debt associated with trust preferred securities would be terminated.

In any event, subordinated debt associated with trust preferred securities would not be included as debt in determining compliance with the 12-year debt reduction and 25-year debt retirement requirements of the Policy Statement.

Small BHC Regulatory Reporting

In order to assist the Federal Reserve in monitoring the financial health and operations of BHCs, the Board requires all BHCs to file certain reports with the Federal Reserve. One of the most important of the Federal Reserve reporting requirements is the Financial Statements for Bank Holding Companies (FR Y–9 series of reports; OMB No. 7100–0128). Currently, BHCs with consolidated assets of less than $150 million (and that also meet qualitative criteria similar to those in the Policy Statement) submit limited summary parent-only financial data semiannually on the FR Y–9SP. Currently, BHCs with consolidated assets of $150 million or more submit parent only financial data on the FR Y–9LP and consolidated financial data on the FR Y–9C quarterly.

In the near future, the Federal Reserve plans to propose for comment revisions to the FR Y–9 series of reports for 2006 (2006 proposal). Pending approval, these revisions would include increasing the FR Y–9SP reporting threshold from $150 million to $500 million and conforming the FR Y–9SP reporting exception criteria to the proposed qualitative exception criteria under the Policy Statement and the Capital Guidelines. Under the 2006 proposal, BHCs that meet the criteria for filing the FR Y–9SP would be exempt from filing the FR Y–9LP and FR Y–9C. Conversely, BHCs subject to the Capital Guidelines, including small BHCs that do not qualify under the revised Policy Statement and qualifying small BHCs that voluntarily elect to comply with the Capital Guidelines, would file the FR Y–9LP and the FR Y–9C on a quarterly basis.

Comments

The Board seeks comments on all aspects of this proposal. Interested parties are encouraged to provide comments on the proposed increase to the asset threshold for the Policy Statement and the Capital Guidelines, and on whether the proposed $500 million threshold should be further adjusted over time based upon an index and, if so, what would constitute an appropriate index for this purpose. Interested parties also are encouraged to provide comments on the proposed qualitative criteria that would determine whether the Policy Statement or the Capital Guidelines apply to a BHC with consolidated assets of less than $500 million.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board has determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. However, the proposed rule would reduce regulatory burden by exempting most BHCs with total consolidated assets of between $150 million and $500 million from the application of the Board's Capital Guidelines. Moreover, although the proposal would treat subordinated debt associated with trust preferred securities as debt for most purposes under the Policy Statement, the proposal provides a substantial five-year transition period for subordinated debt associated with trust preferred securities issued on or prior to the publication date of the proposed rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1.), the Board has reviewed this proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget. The Board has determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As mentioned previously, related amendments to the FR Y–9 series of reports will be proposed separately for comment in the near future.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies,

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trust, in which a BHC owns all of the common securities. The special purpose entity's sole asset is a deeply subordinated note issued by the BHC that typically has a fixed maturity of 30 years.

[2] The Board also would consider subordinated debt associated with the issuance of trust preferred securities as covered by any supervisory debt commitments with the Federal Reserve.

[3] A BHC that is subject to the Capital Guidelines generally may count an amount of qualifying trust preferred securities as tier 1 capital up to 25 percent of the sum of the BHC's core 1 capital elements. 12 CFR part 225, appendix A, § II.A.1.b.

[4] *See* 12 CFR part 225, appendix A, § II.A.1.b.ii.

Reporting and recordkeeping requirements, Securities.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, part 225 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. Appendix A to part 225 is amended as follows:

a. In section I, the fifth undesignated paragraph is revised.

b. In section I, footnote 4 is removed and reserved.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk Based Measure

I. * * *

* * * * *

The risk-based guidelines apply on a consolidated basis to any bank holding company with consolidated assets of $500 million or more. The risk-based guidelines also apply on a consolidated basis to any bank holding company with consolidated assets of less than $500 million if the holding company (i) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) conducts significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; or (iii) has a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission (SEC). The Federal Reserve may apply the risk-based guidelines at its discretion to any bank holding company, regardless of asset size, if such action is warranted for supervisory purposes.

* * * * *

3. Appendix C to part 225 is amended as follows:

a. In section 1, the first undesignated paragraph is revised.

b. In section 1, footnote 1 is removed and reserved.

c. In section 2.A., a new paragraph is added after the first paragraph in footnote 3.

Appendix C to Part 225—Small Bank Holding Company Policy Statement

* * * * *

1. * * *

This policy statement applies only to bank holding companies with *pro forma* consolidated assets of less than $500 million that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board may in its discretion exclude any bank holding company, regardless of asset size, from the policy statement if such action is warranted for supervisory purposes.

* * * * *

2. * * *

A. * * *

3 * * *

Subordinated debt associated with trust preferred securities generally would be treated as debt for purposes of paragraphs 2C, 3A, 4Ai, and 4Bi of this policy statement. A bank holding company, however, may exclude from debt an amount of subordinated debt associated with trust preferred securities up to 25 percent of the holding company's equity (as defined below) less goodwill on the parent company's balance sheet in determining compliance with the requirements of such paragraphs of the policy statement. In addition, a bank holding company that has not issued subordinated debt associated with trust preferred securities after September 8, 2005, may exclude from debt any subordinated debt associated with trust preferred securities until September 8, 2010. Subordinated debt associated with trust preferred securities will not be included as debt in determining compliance with any other requirements of this policy statement.

* * * * *

4. Appendix D to part 225 is amended as follows:

a. In section I., paragraph b. is revised.

b. In section I.b., footnote 2 is removed and reserved.

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

I. * * *

b. The tier 1 leverage guidelines apply on a consolidated basis to any bank holding company with consolidated assets of $500 million or more. The tier 1 leverage guidelines also apply on a consolidated basis to any bank holding company with consolidated assets of less than $500 million if the holding company (i) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) conducts significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; or (iii) has a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Federal Reserve may apply the tier 1 leverage guidelines at its discretion to any bank holding company, regardless of asset size, if such action is warranted for supervisory purposes.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 1, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–17740 Filed 9–7–05; 8:45 am]

BILLING CODE 6210–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AG28

Revised Medical Criteria for Evaluating Growth Impairments

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules we use to evaluate growth impairments of individuals under age 18 who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are in section 100.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating growth impairments, along with our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

DATES: To be sure your comments are considered, we must receive them by November 7, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf.Rules+Open+To+Comment* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830, or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of

Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment*, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment.*

FOR FURTHER INFORMATION CONTACT: Rosemarie A. Greenwald, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–7813 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate growth impairments of individuals under age 18 who apply for, or receive, disability benefits under title II and SSI payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for children with growth impairments.

Who Should Send Us Comments and Suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by individuals under age 18 with growth impairments. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for children who have growth impairments, experts in the evaluation of growth impairments, diseases and injuries, researchers, people who make disability determinations and decisions for us, and any other individual who may have ideas for us to consider.

Will We Respond to Your Comments From This Notice?

We will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as the results of current medical research and our program experience, we will decide how to revise the rules we use to evaluate growth impairments. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Which Rules Are We Considering Updating and Revising?

We are considering the updating and revision of section 100.00. This is the section for evaluating growth impairments in children (Part B, 100.00). This body system addresses linear growth impairments of individuals under age 18.

Where Can You Find These Rules on the Internet?

You can find these rules on our Internet site at these locations:

- Section 100.00 is in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404–ap10.htm.*
- You can also look up section 100.00 of the listings at *http://www.ssa.gov/disability/professionals/bluebook/.*
- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Why Are We Updating and Revising Our Rules for Evaluating Growth Impairments?

We first published the growth impairment listings in the **Federal Register** on March 16, 1977 (42 FR 14705). Except for minor changes we made to them on December 6, 1985 (50 FR 50068) and April 24, 2002 (67 FR 20018), we have not comprehensively updated or revised them since 1977. We published an Advanced Notice of Proposed Rulemaking on June 14, 2000 (65 FR 37321), in which we asked for suggestions on how we could update and revise the growth impairment listings. We received very few comments. Because there may have been changes in the evaluation and treatment of growth impairments in the last five years, we are asking for suggestions from the public once again before we decide how to revise the rules for evaluating growth impairments.

The current listings for growth impairments (100.00) will no longer be effective on July 2, 2007, unless we extend them or revise and promulgate them again.

What Should You Comment About?

We are interested in any comments and suggestions you have about section 100.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You have concerns about any of the current growth impairment listing provisions, such as whether you think we should change any of our criteria or whether you think a listing is difficult to use or to understand.
- You would like our growth impairment listings to include something that they do not include now, such as weight-related conditions, or you believe new medical criteria, such as Body Mass Index (BMI), should be added to the listings.

We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

What Other Information Will We Consider?

We will also be considering information from other sources, including the following recent documents, for relevance to our policy for evaluating growth impairments.

- ''Criteria for Determining Disability in Infants and Children: Short Stature.'' *Evidence Report/Technology Assessment No. 73.* Rockville, MD: Agency for Healthcare Research and Quality (AHRQ Publication No. 03–E025) March, 2003. This report is available at: *http://www.ahrq.gov/clinic/tp/shorttp.htm.*
- ''Criteria for Determining Disability in Infants and Children: Low Birth Weight.'' *Evidence Report/Technology Assessment No. 70.* Rockville, MD: Agency for Healthcare Research and Quality (AHRQ Publication No. 03–E010) December, 2002. This report is available at *http://www.ahrq.gov/clinic/tp/lbwdistp.htm.*
- ''Criteria for Determining Disability in Infants and Children: Failure to

Thrive.'' *Evidence Report/Technology Assessment No. 72.* Rockville, MD: Agency for Healthcare Research and Quality (AHRQ Publication No. 03–E026) March, 2003. This report is available at *http://www.ahrq.gov/clinic/tp/fthrivetp.htm.*

• Behrman, R.E., Kliegman, R.M., and Jenson, H.B. (Eds.) (2004). Nelson Textbook of Pediatrics. Philadelphia, PA: Elsevier Science (USA).

• McMillan, J.A., DeAngelis, C.D., Feigin, R.D., Warshaw, J.B. (Eds.) (1999). Oski's Pediatrics, Principles and Practice. Philadelphia, PA: Lippincott Williams & Wilkins.

Other Information

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

• Workers insured under the Act,

• Children of insured workers, and

• Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for SSI payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability for Individuals Under Age 18?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months.

If you are under age 18 and file a claim under title II, disability means you have a medically determinable impairment(s) as described above and that results in the inability to do any substantial gainful activity. If you are under age 18 and file a claim under title XVI, disability means you have a medically determinable impairment(s) as described above and that results in marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

If you are under age 18 and seeking benefits under title II of the Act, we use a five-step ''sequential evaluation process'' to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for persons under age 18 who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: August 16, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 05–17790 Filed 9–7–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 2001P–0120 (Formerly Docket No. 01P–0120)]

Medical Devices; Needle-Bearing Devices; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of an advance notice of proposed rulemaking (ANPRM) concerning needle-bearing devices. FDA is concerned about the significant health risk posed by needlestick and other percutaneous injuries but FDA believes that the actions it has taken and continues to take along with the actions taken by the Occupational Safety and Health Administration (OSHA) are addressing the issue adequately at this time.

DATES: The ANPRM published at 67 FR 41890 (June 20, 2002), is withdrawn as of September 7, 2005.

ADDRESSES: Responses to petitions and references may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 or on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

On March 6, 2001, FDA received and then filed a petition that had been submitted jointly by Public Citizen's Health Research Group (HRG), a consumer advocacy group, and the Service Employees International Union (SEIU) (the ''HRG/SEIU petition''). The HRG/SEIU petition requested that FDA take certain actions to further reduce the risk of needlestick injuries to healthcare workers. On September 5, 2001, FDA issued a response to this petition. In its response, FDA stated that it did not have sufficient information to take the actions requested by the petitioners, but that FDA would publish an ANPRM inviting interested persons to submit additional data and information to assist FDA in determining a proper course of action.

In the **Federal Register** of June 20, 2002 (67 FR 41890), FDA published an ANPRM on this topic. FDA invited interested persons to submit comments on the HRG/SEIU petition and other matters related to needlestick prevention by September 18, 2002. FDA received more than 50 written and electronic comments from a wide variety of individuals and organizations.

II. HRG/SEIU Petition

The following is a brief summary of the HRG/SEIU petition. The petition and FDA's response are available from the Division of Dockets Management (see **ADDRESSES**). In requesting the petition and response, refer to docket number 2001P–0120.

A. Banning

The HRG/SEIU petition requested that FDA ban the following:

1. Intravenous (IV) catheters, blood collection devices (needles and tube holders) and blood collection needle sets (''butterfly syringes'') that do not meet the criteria identified in FDA's April 16, 1992, safety alert. This safety alert says that needle-bearing devices should have a fixed safety feature that meets all of the following criteria:

(1) It provides a barrier between the hands and needles after use;

(2) It allows or requires the worker's hands to remain behind the needle at all times;

(3) It is an integral part of the device, and not an accessory; and

(4) It is in effect before disassembly, if any, and remains in effect after disposal.

The safety alert also suggests that the device should be simple and easy to use requiring little training.

2. Glass capillary tubes; and

3. IV infusion equipment that does not use needleless technology or recessed needles.

B. Performance Standard

The HRG/SEIU petition requested that FDA issue performance standards based on the five design criteria identified in the FDA safety alert following the procedures set forth in 21 CFR part 861.

C. Labeling

Finally, the HRG/SEIU petition requested that FDA require that the labeling for ''conventional syringes'' state: ''TO PREVENT POSSIBLE EXPOSURE TO HIV AND HEPATITIS, DO NOT USE FOR STANDARD BLOOD DRAWS.'' The petitioners stated that current labeling for syringes does not contain adequate warning of the hazards that the device presents.

III. Comments

A. Banning

A few comments supported the ban proposed in the HRG/SEIU petition. One of these comments submitted three studies that showed a significant decrease in needlesticks when safety devices were used. In their comment, HRG objected to FDA's conclusion in the petition response that there was insufficient information to relate injuries to specific devices so as to justify banning them. HRG suggested that FDA should make a greater effort to extract the data from its own records to support a ban. Many comments opposed a ban. Several of these comments suggested that the criteria for banning a device under section 516 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360f) were not met. Many of the comments suggested that a ban would create a critical shortage of necessary devices.

The legal standard to be applied by FDA in deciding whether it is appropriate to ban a device is set out in section 516 of the act. This section states that FDA may ban a device if it finds that the device presents a ''substantial deception or an unreasonable and substantial risk of illness or injury.'' The regulations implementing section 516 state that, in determining whether the risk of illness or injury is substantial, FDA will need to consider whether the risk posed by continued marketing of the device is important, material, or significant in relation to the benefit to the public health from continued marketing (21 CFR 895.21(a)(1)).

In its response to the HRG/SEIU petition, FDA stated that it did not have sufficient information to conclude that there is a legal basis for banning the devices identified in the petition. In support of their petition, the petitioners refer to occupational exposure data obtained from the Epinet database coordinated by the University of Virginia (Ref. 1) The Epinet data show that 52 hospitals with a total average daily census of 9,681 patients reported 3,180 sharp object injuries in 1998. Syringes accounted for 33 percent of these injuries; needles on IV lines, 2 percent; butterfly needles, 8 percent; vacuum tube blood collection needles, 6 percent; IV catheter stylets and glass capillary tubes, less than 1 percent.

The petition also cited similar data from the Centers for Disease Control and Prevention (CDC). The CDC reported

that, for the period from June 1995 to July 1999, there were 4,951 sharp object injuries reported to its surveillance system. Of these reported injuries, 29 percent involved hypodermic needles, 13 percent butterfly needles, 6 percent IV catheter stylets, and 4 percent blood drawing needles. The petition also stated that 8 percent of exposures with hollow bore needles were categorized as IV line-related.

Although the HRG/SEIU petition addressed the number of injuries related to generic types of devices, it did not show: (1) Which specific devices were used; (2) how many devices of that type were used during the relevant time period; (3) what the design characteristics of those devices were; or (4) whether the devices met any or all of the design criteria listed. In the absence of such information about specific devices, FDA was unable to conclude that any particular device presented a ''substantial deception or an unreasonable and substantial risk of illness or injury.'' FDA has not received any information since publication of the ANPRM that would lead it to reach a different conclusion.

B. Performance Standards

Many of the comments expressed a willingness to participate in the development of a performance standard for needle-bearing devices. Many of these same comments and other comments, however, expressed doubt as to whether a standard could be developed because of the wide range of devices and technologies. No comments proposed any specific parameters for such a standard. FDA has consulted with some standard development organizations. The representatives of these groups expressed some willingness to work with FDA to develop a standard but also acknowledged the difficulty of developing a standard to address so many different devices. FDA will continue to work with these standard development groups to determine if one or more useful standards could be developed.

C. Labeling

Some comments suggested that the labeling statement for conventional syringes proposed in the HRG/SEIU petition may be useful. Many comments suggested that the labeling statement was unnecessary.

In its response to the HRG/SEIU petition, FDA stated that the information in the proposed statement is well known to healthcare professionals who use these types of devices and, therefore, under 21 CFR 801.109(c), FDA would not ordinarily require such a statement in the labeling. FDA has not found anything in the comments to suggest a different conclusion.

D. National Association for the Primary Prevention of Sharps Injuries List

The National Association for the Primary Prevention of Sharps Injuries (NAPPSI) requested that FDA post on its Web site and disseminate NAPPSI's Safety Device List. This list includes sharps injury prevention devices. Several comments supported this proposal.

FDA is in favor of health care professionals having access to information that will help them choose safer medical devices. However, FDA believes that it would be difficult to ensure that NAPPSI's Safety Device List was up to date at all times. FDA, nevertheless, encourages health care professionals and others to make use of whatever information is available to choose safe devices.

E. The OSHA Bloodborne Pathogens Standard

Several comments suggested that the OSHA Bloodborne Pathogens (BBP) standard, together with the actions that FDA has been taking, provides sufficient protection.

FDA has been working together with OSHA to reduce the risk of sharps injuries to healthcare workers and others. FDA regulates medical devices, including those containing sharps, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*). OSHA maintains authority to regulate workplace controls for the protection of employees (Refs. 2 and 3).

In the **Federal Register** of December 6, 1991 (56 FR 64004), OSHA issued its BBP standard (29 CFR 1910.1030). The standard reflects OSHA's determination that a combination of engineering and work practice controls, personal protective equipment, training, medical surveillance, hepatitis B vaccination, signs and labels, and other requirements would minimize the risk of disease transmission. FDA provided extensive input and comment to OSHA during the development of this standard.

On November 6, 2000, President Clinton signed the Needlestick Safety and Prevention Act (Public Law 106–430). This statute required OSHA to revise several aspects of the BBP standard within 6 months. In the **Federal Register** of January 18, 2001 (66 FR 5318), OSHA published a final rule amending the BBP standard. The final rule went into effect on April 18, 2001. Again, FDA provided input and comment to OSHA during the development of the amended BBP standard.

The amended BBP standard added new requirements to the annual review and update of a covered employer's exposure control plan. Specifically, under these new requirements, each covered employer must document the extent to which it uses, or has considered using, products that will minimize workplace exposure to needlesticks and other percutaneous injuries. The annual update and review of each covered employer's plan must also reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens and document consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure. Each employer subject to the rule is also required to solicit input from nonmanagerial employees responsible for direct patient care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation, and selection of effective engineering and work practice controls. The employer must document the solicitation in the exposure control plan.

IV. Conclusion

FDA has cleared several hundred devices with needlestick prevention features. FDA continues to work with manufacturers to assist in the clearance of devices with needle-free technology or needlestick prevention features.

On November 12, 2002, FDA issued a guidance document entitled ''Needlesticks Medical Device Reporting Guidance for User Facilities, Manufacturers, and Importers.'' This guidance document outlines FDA's policy for determining when an event involving needlesticks and blood exposure is reportable as a serious injury and when it is reportable as a malfunction.

On March 2, 2001, FDA issued a guidance document entitled ''Premarket Approval Applications (PMA) for Sharps Needle Destruction.'' This document provides guidance to manufacturers on the types of issues and areas of concern that need to be addressed when submitting a PMA for sharps needle destruction devices intended for use in healthcare facilities.

FDA has cosponsored several national meetings on needlestick prevention issues. FDA continues to work with health care professionals on educational issues concerning the safe use of needle-bearing devices.

As noted previously, FDA is working with consensus standards development groups to determine whether standards could be developed to address the issue of needlesticks related to medical devices.

FDA believes that these actions, in conjunction with the actions taken by OSHA under its BBP standard, are sufficient to address the risk of needlestick injuries related to the use of needle-bearing medical devices. FDA, therefore, does not intend to take any of the specific actions requested in the HRG/SEIU petition at this time and is withdrawing the ANPRM published in the **Federal Register** of June 20, 2002.

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Public Citizen Health Research Group and the Service Employees International Union (Docket No. 2001P–0120) and FDA's response dated September 5, 2001.

2. Letter from Dr. Michael A. Friedman, Deputy Commissioner for Operations, Food and Drug Administration, to Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, dated December 18, 1998.

3. Letter from Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, to Dr. Michael A. Friedman, Deputy Commissioner for Operations, Food and Drug Administration, dated February 8, 1999.

Dated: August 29, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–17733 Filed 9–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 24, and 27

[Re: Notice No. 51]

RIN 1513–AB00

Certification Requirements for Imported Natural Wine (2005R–002P); Correction

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On August 24, 2005, TTB published a notice of proposed rulemaking in the **Federal Register** regarding the certification requirements for imported natural wine. We also published a temporary rule on the same subject in the same issue. In that notice of proposed rulemaking, a cross reference contains an incorrect CFR section number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Gail Davis, International Trade Division, Alcohol and Tobacco Tax and Trade Bureau, telephone 202–927–8110.

SUPPLEMENTARY INFORMATION: On August 24, 2005, TTB published a notice of proposed rulemaking, Notice No. 51, in the **Federal Register** entitled ''Certification Requirements for Imported Natural Wine'' (70 FR 49516). Notice No. 51 was cross-referenced to a temporary rule on the same subject, which was published in the same issue as T.D. TTB–31 (70 FR 49479). Notice No. 51 contains a cross reference with an incorrect CFR section number.

Therefore, in the **Federal Register** of August 24, 2005, on page 49518, in the first column, in paragraph number (7), the cross-reference instruction should read as follows:

[The text of proposed § 27.140 is the same as the text of § 27.140 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

Dated: June 1, 2005.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. 05–17756 Filed 9–7–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2005–22363] [Formerly CGD08–05–049]

RIN 1625–AA09

Drawbridge Operation Regulation; Lafourche Bayou, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; change of address and docket number for comments.

SUMMARY: On September 2, 2005, the Coast Guard published a notice and requested comments on a proposed change to regulations governing six drawbridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway, in Lafourche Parish, Louisiana. The proposed rule would change bridge schedules so that they would remain closed to navigation at various times on weekdays during the school year to facilitate the safe, efficient movement of staff, students and other residents within the parish. That notice was signed August 26, 2005, before Hurricane Katrina struck New Orleans and caused that city to be flooded. We have changed the address and docket number where comments on the proposed rule should be sent because of flood conditions in New Orleans.

DATES: Comments and related material must reach the Coast Guard on or before November 1, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2005–22363 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Wiebusch, Bridge Administration Branch, telephone 314–539–3900, ext. 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2005–22363), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Change of Address and Docket Number

The notice of proposed rulemaking published September 2, 2005 (70 FR 52340) entitled, ''Drawbridge Operation Regulation; Lafourche Bayou, Lafourche Parish, LA'', listed an address in New Orleans as the place to send your comments on the proposed rule. That rulemaking notice was signed August 26, 2005, before Hurricane Katrina struck New Orleans and flooded that city. We have changed the location for receiving comments because of flood conditions in New Orleans. If you wish to comment on the proposed rule, send your comment to the Docket Management Facility in Washington, DC, by one of the means indicated in the **ADDRESSES** section above in this notice.

With this change of address, we have also changed the docket number to USCG–2005–22363. Please use this new docket number.

Dated: September 2, 2005.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 05–17830 Filed 9–2–05; 3:25 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. R02–OAR–2005–NY–0002; FRL–7958–9]

Approval and Promulgation of Implementation Plans; Onondaga County Carbon Monoxide Maintenance Plan Revision; State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan revision submitted on June 22, 2004 by the State of New York to revise the Carbon Monoxide maintenance plan for Onondaga County, New York. EPA is proposing to approve this New York CO maintenance plan because it provides for continued maintenance of the CO National Ambient Air Quality Standard.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is proposing to approve the State's SIP submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 11, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0002 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/.* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select quick search, then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *werner.raymond@epa.gov.*

4. Fax: (212) 637–3901.

5. Mail: RME ID Number R02–OAR–2005–NY–0002, Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866.

6. Hand Delivery or Courier: Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are anonymous access systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 2 Regional Office, 290 Broadway, New York, NY.

EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 11, 2005.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 05–17720 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 05–06]

Non-Vessel-Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry; correction.

SUMMARY: This document corrects a portion of the Notice of Inquiry issued August 30, 2005.

DATES: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol St., NW., Room 1046, Washington, DC 20573–0001, *Secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On September 2, 2005, the Federal Maritime Commission published a Notice of Inquiry requesting public comment on possible changes to its exemption for non-vessel-operating common carriers from certain tariff publication requirements of the Shipping Act of 1984. On page 52345 of the **Federal Register**, in the third column, in the fourth sentence of the **SUPPLEMENTARY INFORMATION**, the quotation of the Commission's regulation at 46 CFR 531.3(p) incorrectly omitted the phrase ''or two or more affiliated NVOCCs.'' The entire sentence should read as follows:

> The rule defines an NSA as ''a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level.'' 46 CFR 531.3(p).

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–17780 Filed 9–7–05; 8:45 am]

BILLING CODE 6730–01–P

Notices

Federal Register
Vol. 70, No. 173
Thursday, September 8, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION MEETING

Board of Directors Meeting

Time: Wednesday, September 14, 2005—9 a.m.–4 p.m.

Place: The African Development Foundation, Conference Room, 1400 I Street, NW., Washington, DC 20005.

Date: September 14, 2005.

Status: Open Session.

Wednesday 14, 2005
9 a.m. to 12 noon
1 p.m. to 3 p.m.

Closed Executive Session

Wednesday 14, 2005
3 p.m. to 4 p.m.

Agenda

Wednesday, September 14, 2005
9 a.m. Chairman's Report
9:30 a.m. President's Report
12 noon Break
1 p.m. President's Report
3 p.m. Executive's Session
4 p.m. Adjournment for day

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who may be reached at (202) 673–3916.

Nathaniel Fields,

President.

[FR Doc. 05–17886 Filed 9–2–05; 4:59 am]

BILLING CODE 6116–01–M

ANTITRUST MODERNIZATION COMMISSION

Notice of Public Hearings

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public hearings.

SUMMARY: The Antitrust Modernization Commission will hold public hearings on September 29, 2005. The topics of the hearings are the State Action Doctrine and Exclusionary Conduct.

DATES: September 29, 2005, 9:30 a.m. to 11:30 a.m. and 12:45 p.m. to 5 p.m. Interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, Headquarters Room 432, 600 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233–0701; e-mail: *info@amc.gov.* Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The purpose of these hearings is for the Antitrust Modernization Commission to take testimony and receive evidence regarding the State Action Doctrine and Exclusionary Conduct. The hearing on the State Action Doctrine will consist of one panel. It will begin at 9:30 a.m. and conclude at 11:30 a.m. The hearing on Exclusionary Conduct will consist of two panels. The first panel will begin at 12:45 p.m. and run until 2:45 p.m. The second panel will run from 3 p.m. to 5 p.m. Materials relating to the hearings, including lists of witnesses and the prepared statements of the witnesses, will be made available on the Commission's Web site (*http://www.amc.gov*) in advance of the hearings.

Interested members of the public may submit written testimony on the subject of the hearing in the form of comments, pursuant to the Commission's request for comments. See 70 FR 28902 (May 19, 2005). Members of the public will not be provided with an opportunity to make oral remarks at the hearings.

The AMC is holding this hearing pursuant to its authorizing statute. Antitrust Modernization Commission Act of 2002, Pub. L. 107–273, section 11057(a), 116 Stat. 1758, 1858.

Dated: September 2, 2005.

By direction of the Antitrust Modernization Commission.

Andrew J. Heimert,

Executive Director & General Counsel, Antitrust Modernization Commission.

[FR Doc. 05–17812 Filed 9–7–05; 8:45 am]

BILLING CODE 6820–YH–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Commercial Service Client Focus Groups.

Agency Form Number: ITA–XXXX.

OMB Number: 0625–XXXX.

Type of Request: Regular Submission.

Burden: 192 hours.

Number of Respondents: 96.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. As part of its mission, the U.S. Commercial Service uses ''Quality Assurance Surveys'' to collect feedback from the U.S. business clients it serves. These surveys ask the client to evaluate the U.S. Commercial Service on its customer service provision. Results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies. In addition to collecting client feedback through Quality Assurance Surveys, the U.S. Commercial Service would like to institutionalize client focus groups as another mechanism to obtain further client feedback and substantiate customer service trends we are seeing in the surveys. Client focus groups will enrich the quantitative data of surveys by providing a qualitative context for the trends that emerge. The purpose of the attached client focus group questioning routes is to collect feedback from U.S. businesses that receive export assistance services from the U.S. Commercial Service. In providing these services, the U.S. Commercial Service promotes the goods and services of small and medium-sized U.S. companies in foreign markets.

Affected Public: U.S. companies that are recruited by the U.S. Commercial Service.

Frequency: Upon recruitment of client focus groups (On occasion).

Respondents Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Department Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230. E-mail *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of the publication of this notice in the **Federal Register**.

Dated: September 2, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17809 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1409

Approval for Expansion of Subzone 84O, ExxonMobil Corporation (Oil Refinery), Baytown, Texas

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Houston Authority, grantee of FTZ 84, has requested authority on behalf of ExxonMobil Corporation (ExxonMobil), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 84O at the ExxonMobil refinery in Baytown, Texas (FTZ Docket 46–2004, filed 10/22/2004);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 64026, 11/3/2004 and 69 FR 77986, 12/29/04);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 84O, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR § 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non–privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings ι2709.00.10, ι2709.00.20, ι2710.11.25, ι2710.11.45, ι2710.19.05, ι2710.19.10, ι2710.19.45, ι2710.91.00, ι2710.99.05, ι2710.99.10, ι2710.99.16, ι2710.99.21 and ι2710.99.45 which are used in the production of:

-petrochemical feedstocks (examiners report, Appendix ''C'');

-products for export;

-and, products eligible for entry under HTSUS ι 9808.00.30 and ι 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 30th day of August 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–17827 Filed 9–7–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application of License To Enter Watches and Watch Movements Into the Customs Territory of the United States (Proposed New Title—Application for Insular Watch and Jewelry Program Benefits)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 7, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.* or by phone at (202) 482–0266.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Acting Director, Statutory Import Programs Staff, FCB Suite 4100W, U.S. Department of Commerce, Washington, DC 20230; Phone number: (202) 482–3526, and fax number: (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 97–446, as amended by Public Law 103–465, Public Law 106–36 and Public Law 108–429, requires the Departments of Commerce and the Interior to administer the distribution of watch duty-exemptions and watch and jewelry duty-refunds to program producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the laws and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–334P is the principal program form used for recording operational data which are the bases for determining program entitlements and their distribution among the producers. This form also serves as the producer's application to the Departments for these entitlements. The form is completed biannually by watch and jewelry manufacturers. We propose modifying the form and the title of the form due to the passage of Public Law 106–36 and Public Law 108–429. Also, due to the passage of Public Law 108–429, new paperwork requirements need to be added to Form ITA–334P. Without the additional data, it would not be possible to calculate the further benefits mandated by law.

II. Method of Collection

The Department of Commerce sends Form ITA–334P to each watch and jewelry producer biannually. A company official completes the form

and returns it to the Department of Commerce.

III. Data

OMB Number: 0625–0040.
Form Number: ITA–334P.
Type of Review: Revision-Regular Submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 16.
Estimated Time Per Response: 3 hour.
Estimated Total Annual Burden Hours: 48 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $40,960 ($960 for respondents and $40,000 for Federal government (included are most administration costs of program).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 2, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–17810 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Partial Rescission

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate from Romania. The period of the period August 1, 2003, to July 31, 2004. We preliminarily determine that sales of subject merchandise by Ispat Sidex, S.A. (now known as Mittal Steel Galati, S.A. (''MS Galati'') [1]) have been made below normal value (''NV''). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s), and (2) a brief summary of the argument(s). We will issue the final results no later than 120 days from the publication of this notice.

EFFECTIVE DATE: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, John Drury or Abdelali Elouaradia at (202) 482–8029, (202) 482–0195, and (202) 482–1374, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania for the period of August 1, 2003, through July 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 31, 2004, the Department received four timely requests for an administrative review of this order. The Department received a timely request from the International Steel Group, Inc. (''ISG''), a domestic interested party, requesting that the Department conduct an administrative review of shipments exported to the United States from the following Romanian plate producers/exporters: (1) MS Galati, (2) Metalexportimport, S.A. (''MEI''), (3) Metanef, S.A. (''Metanef''), and (4) Combinatul de Oteluri Speciali Tirgoviste (''COST''). In addition, the Department received a timely request from MS Galati and Ispat North America Inc. (''INA''), an exporter and U.S. affiliated importer of subject merchandise (collectively ''respondents''), requesting that the Department conduct an administrative review of subject merchandise exported to the United States from producer MS Galati. Also, the Department received a timely request on behalf of IPSCO Steel Inc. (''IPSCO''), a domestic producer, requesting that the Department conduct an administrative review of subject merchandise produced by MS Galati and exported from Romania by MEI. Finally, the Department received a timely request on behalf of Nucor Corporation, a domestic producer, requesting that the Department conduct an administrative review of subject merchandise exported by the following Romanian plate producers/exporters: (1) MS Galati, (2) MEI, (3) CSR SA Resita (''CSR''), and (4) MINMET, S.A. (''MINMET'').

On September 22, 2004, the Department initiated an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania, for the period covering August 1, 2003, through July 31, 2004, to determine whether merchandise imported into the United States is being sold at less than NV. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004) (''*Notice of Initiation*'').

On September 24, 2004, the Department issued antidumping duty questionnaires to the six above-referenced Romanian companies. On October 4, 2004, the Department received a letter from Metanef stating that it made no shipments of subject merchandise to the United States during the POR. On October 8, 2004, MINMET submitted a letter stating that it has never shipped subject merchandise to the United States, including during the POR. On May 12, 2005, the Department received a letter from COST stating that it did not produce or make shipments of subject merchandise during the POR. On August 3, 2005, Nucor submitted a letter withdrawing its request for review of CSR. With regard to Metanef, CSR, COST, and MINMET, we intend to rescind this review based on the receipt of a withdrawal of request for a review and/or notification of no shipments made during the POR. For a full discussion of the intent to rescind with respect to these companies, *see* the ''Notice of Intent to Rescind in Part'' section of this notice below.

[1] On June 21, 2005, we determined that MS Galati was the successor-in-interest to Ispat Sidex, S.A. *See Final Results of Changed Circumstances Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Romania*, 70 FR 35624 (June 21, 2005).

On October 29, 2004 and November 1, 2004, we received Section A responses from MS Galati and MEI, respectively.[2] On December 1, 2004, MS Galati filed its Section B and C questionnaire responses and MEI stated in this same filing that MEI did not have any home market (''HM'') sales during the POR and, thus, would not be filing a Section B response.[3] On February 28, 2005, the Department issued a supplemental questionnaire regarding MS Galati's Sections A through C questionnaire responses. On March 22, 2005, MS Galati submitted its response to the supplemental questionnaire. On June 16, 2005, the Department issued a second supplemental questionnaire with regard to Sections A through C. We received MS Galati's response to this supplemental questionnaire on July 1, 2005. On July 6, 2005, MS Galati submitted to the Department a revised U.S. sales database as it identified a programming error in the dataset when it was submitted as part of its second supplemental response.

On December 13, 2004, IPSCO submitted allegations of sales below cost of production (''COP'') against the former Ispat Sidex, now Mittal Steel. Upon a thorough review of IPSCO's allegation, the Department initiated a sales-below-cost investigation on April 4, 2005, and instructed MS Galati to respond to Section D of the antidumping questionnaire. On April 27, 2005, the Department received MS Galati's Section D Response. On May 6, 2005, the Department issued a supplemental questionnaire regarding MS Galati's section D questionnaire response. On June 29, 2005, we received MS Galati's supplemental questionnaire response. The Department requested that MS Galati provide revised exhibits for its supplemental response and those exhibits were received on July 19, 2005. *See* ''Cost of Production Analysis'' section of this notice below.

On April 15, 2005, due to the complexity of the case and pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department postponed the preliminary results in this administrative review until no later than August 31, 2005. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Extension of Preliminary Results for 2003–2004 Antidumping Duty Administrative Review*, 70 FR 19925 (April 15, 2005).

[2] *See* Department of Commerce Antidumping Duty Questionnaire: Response to Section A of Questionnaire, dated October 29, 2004.

[3] *See* Department of Commerce Antidumping Duty Questionnaire: Response to Sections B and C of the Questionnaire, dated December 1, 2004.

On August 5, 2005, and August 8, 2005, the Department issued a third supplemental questionnaire regarding MS Galati's cost responses and a further supplemental regarding MS Galati's model match hierarchy, respectively. On August 17, 2005, MS Galati submitted additional information on the record confirming its date of sale methodology. *See* section on ''Date of Sale'' below. On August 17, 2005, the Department received the response for the cost supplemental questionnaire. On August 22, 2005, the Department sent a letter to MS Galati requesting specific changes to its home market and U.S. sales databases, based on the verification findings and minor corrections. *See* Letter to Mittal Steel Galati, S.A. from Abdelali Elouaradia, program manager, Request for New Databases, dated August 22, 2005. On August 24, 2005, the Department received MS Galati's response to the model match supplemental questionnaire. On August 25, 2005, the Department received MS Galati's revised sales files as requested by the Department.

Result of Changed Circumstances Review: Successorship

On March 14, 2005, the Department received a request from Ispat Sidex S.A. to conduct a changed circumstances review, as the company recently changed its name to Mittal Steel Galati, S.A. following the acquisition of its parent, LNM Holdings, by the Mittal Steel Group in early 2005. Pursuant to Section 751(b) of the Act and 19 CFR 351.216 of the Department's regulations, the Department initiated a changed circumstance review to establish whether Mittal Steel Galati, S.A. is the successor-in-interest to Ispat Sidex, S.A. On May 3, 2005, the Department published in the **Federal Register** a Notice of Initiation and Preliminary Results. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circustances Antidumping Duty Administrative Review*, 70 FR 84 (May 3, 2005). We allowed a period for public comment on our preliminary results. No comments were received by any interested party, and therefore the Department issued its final results, finding that Mittal Steel Galati, S.A. is the successor-in-interest to Ispat Sidex, S.A. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut-to-Length Carbon Steel Plate from Romania*, 70 FR 118 (June 21, 2005).

Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. *See e.g., Stainless Steel Plate in Coils from Taiwan: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789, 5790 (February 7, 2002) and *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 66 FR 18610 (April 10, 2001). As discussed above, Metanef, MINMET, and COST informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with CBP. As also noted above, the Department received a withdrawal of the request for review from petitioner in regard to CSR. Therefore, in accordance with 19 CFR 351.213(d)(1) and (d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to these companies. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731, 64732 (Nov. 8, 2004) (''2002–2003 Rebar Review'') and *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127, 53128 (Sept. 9, 2003) (''2001–2002 Rebar Review'').

With regard to MEI, in the course of this review, we have found that (a) MEI is not the producer of subject merchandise, (b) MEI does not take title to the merchandise which MS Galati exports through MEI, and (c) MS Galati has knowledge of the destination of its subject merchandise exports. Therefore, the Department is concluding that MEI had neither sales nor shipments of subject merchandise during the POR, and accordingly we are preliminarily rescinding the review with respect to MEI.

Scope of the Order

The products covered by this order include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250

millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included under this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, and 19 C.F.R. 351.307 of the Department's regulations, we conducted a sales verification of the questionnaire responses of MS Galati and MS Galati's U.S. affiliate, INA. We used standard verification procedures, including on-site inspection of MS Galati's production facility. Our verification results are outlined in the following two memoranda: (1) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of Home Market and U.S. Sales Information Submitted by Mittal Steel Galati S.A. and Metalexportimport S.A., dated August 9, 2004 (''MS Galati Verification Report''); and (2) Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Mittal Steel Galati, S.A. (''MS Galati''), dated August 22, 2004 (''CEP Verification Report''). Public versions of these reports are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

Universe of Sales

In its Section C questionnaire response to the Department, MS Galati relied on two date of sale methodologies. For the first seven months of the POR, MS Galati reported the date of invoice as the date of sale. For the remaining five months of the POR (*i.e.*, March through July 2004), MS Galati reported the order acknowledgment date as the date of sale. As a result, the universe of U.S. sales reported to the Department includes constructed export price (''CEP'') sales with entry dates outside of the POR. Consistent with the Department's practice and the antidumping duty questionnaire issued to MS Galati, dated September 24, 2004, the Department bases its analysis on ''each U.S. sale of merchandise entered for consumption during the POR, except * * * for CEP sales made after importation * * *'' where the Department will base its analysis on ''each transaction that has a date of sale within the POR.'' *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 69 FR 33630 (June 16, 2004); *see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 63 FR 39071 (July 21, 1998). Because all sales made by MS Galati to the United States are back-to-back CEP sales (*i.e.*, the sales are made prior to importation and the merchandise was not taken into inventory upon entering the United States, as verified by the Department), we will only use entries of subject merchandise made during the POR. *See* Analysis Memo for further discussion of MS Galati's back-to-back CEP sales; *see also* CEP Verification Report, dated August 22, 2005, at pages 6 through 10.

Date of Sale

As stated in the ''Universe of Sales'' section above, MS Galati reported two date of sale methodologies for its CEP sales. In determining the appropriate date of sale, the Department preference is to use the date of invoice as the date of sale. *See* 19 CFR 351.401(i); *see also*, *Allied Tube and Conduit Corp.* v. *United States*, 132 F. Supp. 2d 1087 (CIT 2001) (''Allied Tube''). Moreover, the preamble to the Department's regulations expresses a strong preference for the Department to choose a single date of sale across the full period of review. *See Antidumping Duties; Countervailing Duties: Final Rule*; 62 FR 27296, 27349 (May 19, 1997) (''the Preamble'').

At the verifications conducted at MS Galati's headquarters in Romania and in Chicago at the headquarters of the U.S. affiliate, INA, we found that, based on sales documentation which the Department verified, the terms of sale changed between the order acknowledgment and the invoice for certain sales prior to March 2004. Furthermore, we found that the company will accept changes to the terms of sale after March 2004, although any change to the terms are memorialized in the form of an additional order acknowledgment. Therefore, after reviewing the sales process for U.S. sales for the full POR, we find that sales terms were susceptible to change, and in fact, quantities changed in excess of the allowable variations per the order acknowledgment. For these preliminary results, the Department will use the invoice date as the appropriate date of sale for the POR. Because the Department is not including sales which were entered into the United States after the POR for margin calculation purposes, and all of the reported sales using order acknowledgment as the date of sale entered after the POR, the issue of reporting different date of sale methodologies is no longer an issue in this case. *See* Analysis Memo for further discussion.

Fair Value Comparisons

To determine whether MS Galati's sales of the subject merchandise from Romania to the United States were made at prices below NV, we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. MS Galati initially reported sales directly to unaffiliated customers as export price (''EP sales'') in the United States, but we have disregarded those sales in these preliminary results because they appear to be of non-subject merchandise outside of the scope of these proceedings. For further explanation, see Analysis Memo.

Therefore, pursuant to section 777A(d)(2), we compared the constructed export prices of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products

covered by the ''Scope of the Order'' section above, which were produced and sold by MS Galati in the home market during the POR, to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on eight characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of importance): (1) Painting; (2) quality; (3) specification and/or grade; (4) heat treatments; (5) standard thickness; (6) standard width; (7) whether or not checkered (floor plate); and (8) descaling. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* Appendix V of the Department's antidumping duty questionnaire to MS Galati dated September 24, 2004.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d). For purposes of this administrative review, MS Galati has classified its sales as both EP and CEP. However, as noted in the ''Fair Value Comparison'' section, MS Galati initially reported sales directly to unaffiliated customers (*i.e.*, EP sales) in the United States, but we have disregarded those sales in this preliminary determination as they appear to be of merchandise not covered by the scope of the order. MS Galati identified one channel of distribution for U.S. sales: MS Galati to MEI to INA and then to unaffiliated U.S. customers, who are distributors. *See* ''Level of Trade'' section below for further analysis.

For this sales channel, MS Galati has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, we based CEP on the packed duty paid prices to unaffiliated purchasers in the United States, in accordance with subsections 772(b), (c), and (d) of the Act. Where applicable, we made a deduction to gross unit price for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and surveying), and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, commissions, and bank expenses) and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home Market Viability

We compared the aggregate volume of HM sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of HM sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the HM sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the CEP sales, as appropriate. After testing home market viability, we calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice.

B. Cost of Production Analysis

Based on a cost allegation submitted by the petitioner pursuant to 19 CFR 351.301(d)(2)(ii), we found reasonable grounds to believe or suspect that MS Galati made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by MS Galati. *See* Memorandum from John Drury and Patrick Edwards, Case Analysts, and Ernest Gziryan, Case Accountant, to Richard O. Weible, Office Director, regarding Petitioner's Allegation of Sales Below the Cost of Production for Ispat Sidex, S.A., April 4, 2005, on file in the CRU. The Department has conducted an investigation to determine whether MS Galati made home market sales at prices below their COP during the POR within the meaning of section 773(b) of the Act. We conducted the COP analysis in the ''Calculation of Cost of Production'' section as described below.

Because the Department initiated a sales-below-cost investigation, we instructed MS Galati to submit its responses to Section D of the Department's Antidumping Questionnaire. MS Galati submitted its response to the Section D questionnaire on April 27, 2005, and its response to the Department's Section D Supplemental questionnaire of May 6, 2005, on June 29, 2005.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (''G&A'') expenses, interest expenses, and packing expenses. We relied on the COP data submitted by MS Galati in their cost questionnaire responses with the following exceptions:

—We adjusted the transfer prices for certain inputs purchased from affiliated suppliers pursuant to section 773(f)(2) of the Act.

—We adjusted the reported depreciation expense to reflect the 2003 revaluation of the company's assets.

2. Test of Home Market Sales Prices

We compared the weighted-average COP for MS Galati to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home

market prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

We disregarded below-cost sales where (1) 20 percent or more of MS Galati's sales of a given product during the POR were made at prices below the COP, and thus such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that MS Galati made sales below cost and we disregarded such sales where appropriate.

C. Arm's-Length Test

MS Galati reported that it made sales in the HM to affiliated and unaffiliated customers. The Department did not require MS Galati to report its affiliated party's downstream sales because these sales represented less than five percent of total HM sales. Sales to affiliated customers in the HM not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings—Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

D. Price-to-Price Comparisons

We based NV on the HM sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for imputed credit, where appropriate in accordance with section 773(a)(6)(C). In accordance with section 773(a)(6), we deducted HM packing costs and added U.S. packing costs. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade LOT as the EP or CEP transaction. *See also* 19 CFR 351.412 of the Department's regulations. The NV LOT is the level of the starting-price sales in the comparison market or, when NV is based on CV, the level of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profits. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the affiliated importer. See § 351.412(c)(1) of the Department's regulations. As noted in the ''Constructed Export Price'' section above, we preliminarily find that all of MS Galati's sales through its U.S. affiliates are appropriately classified as CEP sales.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than EP or CEP sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (''the CEP offset provision''). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002); *see also Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In analyzing the differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the channels of distribution in each market,[4] including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

In this review, we obtained information from MS Galati regarding the marketing stages involved in sales to the reported home and U.S. markets. MS Galati reported that it sells to unaffiliated distributors and end users in the home market (*i.e.*, Romania), as well as to affiliated end users for consumption and affiliated distributors. In the United States, MS Galati had sales to an affiliate, INA, that resold the merchandise to unaffiliated customers. MS Galati initially reported sales directly to unaffiliated customers in the United States, but we have disregarded those sales in these preliminary results as they appear to be of merchandise not covered by the scope of the order.

MS Galati reported one LOT in the home market with two channels of distribution: (1) Direct sales to customers, and (2) consignment sales. Sales were made to two classes of customers: (1) End users, and (2) distributors. *See* MS Galati's Section A Questionnaire Response dated October 29, 2004, (''AQR'') at page 13 and Appendix 5. *See also* MS Galati's second supplemental response of July 1, 2005, at Appendix 4 (''Second Supplemental Response'') and its Section B Questionnaire Response (''BQR'') dated December 1, 2004, at page 16. For some sales made in the home market, MS Galati stored merchandise at an affiliated warehouse. MS Galati also had sales to affiliated end users for consumption. *See* AQR at page 3 and BQR at page 3. Based on our

[4] The marketing process in the United States and third country market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

review of evidence on the record, we find that home market sales through both channels of distribution to both customer categories, whether affiliated or not, were substantially similar with respect to selling functions and stages of marketing. MS Galati performed the same selling functions at the same level for sales to all home market customers. Accordingly, we preliminarily find that MS Galati had only one LOT for its home market sales.

MS Galati reported one EP LOT and one CEP LOT with two channels of distribution in the United States: (1) Direct sales to end users and distributors, and (2) direct sales by the U.S. affiliate to end users and distributors with merchandise shipped directly from Romania. *See* AQR at A–13. As previously noted in the ''Fair Value Comparison'' section, we are disregarding sales reported as EP sales as we have preliminarily determined such sales to be of merchandise not covered by the scope of the order. Therefore, we preliminarily determine that MS Galati made CEP sales to the United States through one channel of distribution—direct sales to end users and distributors.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by MS Galati on CEP sales, as described by MS Galati in its Second Supplemental Response, after these deductions. We have determined that the selling functions performed by MS Galati on all CEP sales were identical. Accordingly, because the selling functions provided by MS Galati on all sales to its affiliate in the United States are identical, we preliminarily determine that there is one CEP LOT in the U.S. market.

We then compared the selling functions performed by MS Galati on its CEP sales (after deductions) to the selling functions provided in the home market. We found that MS Galati performs additional selling functions for its home market sales to those it provides to its affiliate INA. *See* Second Supplemental Response dated July 1, 2005, at Appendix 3. According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market or third country market is at a more advanced stage than the LOT of the CEP sales. MS Galati reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the home market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by MS Galati for sales in the home market and CEP sales in the U.S. market (*i.e.*, sales support and activities provided by MS Galati on sales to its U.S. affiliate), we preliminarily find that the home market LOT is at a more advanced stage of distribution when compared to CEP sales because MS Galati provides many selling functions in the home market at a higher level of service as compared to selling functions performed for its CEP sales. *See* Second Supplemental Response dated July 1, 2005, at Appendix 3. Thus, we find that MS Galati's home market sales are at a more advanced LOT than its CEP sales. There was only one LOT in the home market, there was no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. As such, we limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Preliminary Results of Review

We note that although MEI was the exporter for all of MS Galati's sales, because MS Galati provided information that it had knowledge that the subject merchandise was destined for the United States, we have calculated a margin solely for MS Galati as the producer of subject merchandise. We preliminarily determine that the following margin is the weighted-average dumping margin of the POR:

Manufacturer/exporter	POR	Margin
Mittal Steel Galati, S.A	08/01/03–07/31/04	48.90 percent.

For details on the calculation of the antidumping duty weighted-average margin for MS Galati and MEI, *see* the Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from Romania, dated August 31, 2004 (''Analysis Memo''). A public version of this memorandum is on file in the CRU.

Assessment

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total value of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the total quantity for the subject merchandise on each of MS Galati's importer's entries during the POR. Antidumping duties for MEI, where the merchandise was not produced by MS Galati, and for any other rescinded companies, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of certain cut-to-length carbon steel plate from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced by MS Galati, the cash-deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated

companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation,[5] but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate described in the final results of this review. We note that all subject merchandise produced by MS Galati will be subject to MS Galati's cash deposit rate as established in the final results, whether or not that merchandise was exported by MEI.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. We note that the cash deposit rate established in the final results of this review will be applied prospectively to cover future entries.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with § 351.224(b) of the Department's regulations. Case briefs for this review must be submitted to the Department no later than fourteen days after the date of the final cost verification report issued in this proceeding. Rebuttal briefs must be filed seven days from the deadline date for case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Case and rebuttal briefs and comments must be served on interested parties in accordance with § 351.303(f) of the Department's regulations.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first business day thereafter. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4889 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Romania*, 58 FR 37209 (July 9, 1993).

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–855

Non-Frozen Apple Juice Concentrate from the People's Republic of China (PRC); Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Frances M. Veith at (202) 482–4295, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: On May 2, 2005, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (Sunset) Reviews*, 70 FR 22632. On the basis of a Notice of Intent to Participate, and an adequate substantive response filed on behalf of domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(c)(2). As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the PRC.[1] On May 17, 2005, the Department received a Notice of Intent to Participate from an interested party, the U.S. Apple Association (U.S. Apple) within the deadline specified in section 315.218(d)(1)(i) of the Department's regulations. U.S. Apple claimed interested party status under section 771(9)(E) of the Act, as a trade association representing all segments of the apple industry. On June 1, 2005, the Department received a complete substantive response from U.S. Apple within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 70 FR 22632 (May 2, 2005) (Initiation Notice).

Scope of the Order

The product covered by this antidumping order is certain non-frozen apple juice concentrate (NFAJC). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*, under the heading ''September 2005.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on NFAJC from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
Xian Asia	3.83
Xian Yang Fuan	3.83
Changsha	3.83
Shandong Foodstuffs	3.83
SAAME	51.74
Yantai Golden	51.74
PRC-Wide Rate	51.74

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4894 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request filed by domestic interested parties, the U.S. Department of Commerce (''the Department'') is conducting an administrative review under the antidumping duty order on oil country tubular goods, other than drill pipe (''OCTG''), from Korea. This review covers the following producers: Husteel Co., Ltd. (''Husteel'') and SeAH Steel Corporation (''SeAH''). The period of review (''POR'') is August 1, 2003, through July 31, 2004. The preliminary results are listed below in the section entitled ''Preliminary Results of Review.'' We preliminarily determine that both Husteel and SeAH made sales below normal value (''NV''). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties based on the difference between the constructed export price (''CEP'') and the NV.

EFFECTIVE DATE: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Nicholas Czajkowski, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0780 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41058). On August 3, 2004, the Department published a notice of an opportunity to request an administrative review of the antidumping order on OCTG from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 46496. On August 31, 2004, the Department received a properly filed, timely request for an administrative review from domestic producers, IPSCO Tubulars, Inc., Lone Star Steel Company, and Maverick Tube Corporations (''petitioners''). On September 22, 2004, the Department published a notice of initiation for this antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745.

On November 12, 2004, the Department issued questionnaires to Husteel and SeAH. Husteel and SeAH submitted Section A[1] responses on January 5, 2005 and Section B–D responses on January 18, 2005. SeAH also submitted a Section E response on January 18, 2005. The Department issued supplemental questionnaires on February 29, 2005, March 24, 2005, and June 6, 2005. Husteel and SeAH

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

submitted responses on March 7, 2005, April 22, 2005, and June 24, 2005.

On March 7, 2005, the Department published a notice extending the deadline for the preliminary results of this administrative review from May 3, 2005, until August 31, 2005. *See Oil Country Tubular Goods from Korea: Extension of Time Limit for Preliminary Results of Administrative Review*, 70 FR 10962.

On November 30, 2004, and December 14, 2004, Husteel and SeAH, respectively submitted a request to the Department for a one-month adjustment to the cost reporting period in this review. Husteel and SeAH requested to report costs from July 1, 2003, through June 30, 2004, rather than for the established period of review (''POR''), August 1, 2003, through July 31, 2004. Husteel and SeAH claimed that the one-month shift in the reporting period would allow them to use their semi–annual financial information, which would ease their reporting burden and simplify accuracy and completeness tests for the Department. Both companies stated that the shift in cost period would not distort their reported costs. In Husteel's and SeAH's December 22, 2004, submissions, each company provided further information regarding their request for the shift in cost period. In their December 2, 2004, and December 28, 2004, submissions, petitioners argued that a shift in the cost period would materially impact the antidumping analysis in this review.

On January 5, 2005, the Department determined that a shift in cost reporting period would be inappropriate. *See* Letter to Husteel and SeAH regarding adjustment the cost reporting period dated January 5, 2005. The Department found that the difference in costs of primary inputs and in the cost of manufacturing between the two periods would have a significant effect on the results in this review. Therefore, the Department instructed Husteel and SeAH to provide cost information for the POR.

PERIOD OF REVIEW

The POR for this administrative review is August 1, 2003, through July 31, 2004.

SCOPE OF THE ORDER

The products covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under sub–headings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS sub–headings are provided for convenience and customs purposes. The written description remains dispositive of the scope of the order.

ANALYSIS

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (''the Act''), we considered all products manufactured by the respondents that are covered by the description contained in the ''Scope of the Order'' section above and were sold in the comparison market during the POR, to be the foreign like product for purposes of determining the appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's November 12, 2004, antidumping questionnaire.

Date of Sale

It is the Department's practice to use the invoice date as the date of sale. We may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer first establishes the material terms of sale. *See* 19 CFR section 351.401(i); *see also Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27348–50 (May 19, 1997).

Husteel

U.S. Sales: For its U.S. sales, Husteel's customers contact Husteel USA, Husteel's U.S. affiliate, by phone and negotiate quantity and price. After production is complete, the merchandise is shipped from Korea and Husteel USA issues its invoice to the U.S. customer. As such, Husteel reported the date of sale to be the shipment date from Korea since that date always precedes Husteel USA's invoice date. The Department has found no information that indicates that another date better reflects the date on which the material terms of sale were established. Therefore, the Department is preliminarily using shipment date as date of sale, as reported by Husteel.

SeAH

U.S. Sales: For its U.S. sales, SeAH reported two channels of distribution: 1 - Inventory sales that were warehoused and, in most cases, further manufactured in the United States by Pusan Pipe America (''PPA''), SeAH's U.S. affiliate (U.S. Channel 1); and 2 - Constructed Export Price (CEP) sales made by PPA and shipped directly to the customer from Korea (U.S. Channel 2). In its submission, SeAH reported a different date of sale for each of its two channels of distribution. For sales in U.S. channel 1, SeAH reported the date of sale to be the date of the commercial invoice issued by PPA to the unaffiliated customer. For sales in U.S. channel 2, SeAH reported the date of sale to be the shipment date from Korea since this date precedes the date of PPA's commercial invoice to its unaffiliated U.S. customer. The Department has found no information that indicates that another date better reflects the date on which the material terms of sale were established. Therefore, the Department is preliminarily using the commercial invoice date as date of sale for U.S. channel 1 and the shipment date as date of sale for U.S. channel 2, as reported by SeAH.

Canadian Sales: For sales to Canada, the comparison market in this review (see ''Normal Value Comparisons'' below), PPA receives an inquiry from the customer by fax or telephone. Once SeAH and PPA agree on the price, the customer then sends a written purchase order to PPA. The merchandise is shipped and SeAH invoices PPA. PPA

then invoices the Canadian customer, pays SeAH, and then receives payment from the customer. As such, SeAH reported the shipment date from Korea since this date precedes the date of PPA's commercial invoice to its unaffiliated Canadian customer. The Department has found no information that indicates that another date better reflects the date on which the material terms of sale were established. Therefore, the Department is preliminarily using shipment date as date of sale, as reported by SeAH.

Normal Value Comparisons

To determine whether Husteel's or SeAH's sales of subject merchandise to the United States were made at less than NV, we compared each company's CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, in accordance with section 777A(d)(2) of the Act.

Selection of Comparison Market

The Department determines the viability of a comparison market by comparing the aggregate quantity of comparison–market sales to U.S. sales. A home market is not considered a viable comparison market if the aggregate quantity of sales of the foreign like product in that market amounts to less than five percent of the quantity of sales of subject merchandise into the United States during the POR. *See* section 773(a)(1)(B) of the Act; *see also* 19 CFR 351.404. Husteel and SeAH each reported that the aggregate quantity of sales of the foreign like product in Korea during the POR amounted to less than five percent of the quantity of each company's sales of subject merchandise to the United States during the POR.

In Husteel's and SeAH's January 18, 2005, questionnaire responses, each company reported that the aggregate quantity of their sales of the foreign like product to the People's Republic of China (PRC) amounted to more than five percent of the total quantity of each company's sales of subject merchandise to the United States during the POR. However, pursuant to section 771(18) of Act, the Department has determined that the PRC is a non–market economy country (NME). Consequently, the Department finds that the prices of Husteel's and SeAH's OCTG sales to the PRC are unrepresentative. As such, pursuant to section 773(a)(1)(B)(ii)(I) of the Act, the Department finds that such prices are inappropriate for use as a basis to establish normal value.

In its January 5, 2005, questionnaire response, Husteel reported having no sales of OCTG to any other countries besides the United States and the PRC during the POR. Therefore, the Department has used constructed value (CV) for Husteel as the basis for NV for this review based on the cost of production (COP) (Section D) questionnaire responses submitted on January 18, 2005.

In its January 5, 2005, questionnaire response, SeAH reported sales of OCTG to Canada and Myanmar during the POR. Since the quantity of foreign like product sold by SeAH into Myanmar was less than five percent of the quantity of subject merchandise sold in the United States, the Department determined that only Canada qualified as a viable comparison market based on the criterion established in section 773(a)(1) of the Act. The Department calculated NV based on the information on sales to Canada provided in SeAH's April 22, 2005, questionnaire response. For U.S. sales for which a match with Canadian sales could not be found, the Department used CV as the basis for comparison based on the information provided by SeAH in Section D of its January 18, 2005, submission.

Normal Value

Price–to-Price Comparisons

SeAH: Where appropriate, we made adjustments to NV in accordance with section 773(a)(6) of the Act. We added duty drawback and deducted movement expenses, third country packing expenses and third country direct selling expenses from the NV. We also made adjustments for CEP–offset (see ''Level of Trade/CEP–offset'' section below), based on the sum of inventory carrying costs and other indirect selling expenses. We made further adjustments for differences in costs attributable to differences in physical characteristics of merchandise. Finally, the Department added U.S. packing expenses to derive the foreign unit price in dollars (''FUPDOL'') to use as the NV.

Constructed Value

Husteel: We used CV as the basis for NV for all sales because Husteel had no viable comparison market in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. Materials, labor, and factory overhead were totaled to derive the cost of manufacturing. Interest, general and administrative (G&A) expenses, selling expenses, profit and U.S. packing expenses were then added to derive the CV. In accordance with section 773(e)(2)(B)(iii) of the Act, we based profit and selling expenses on amounts derived from SeAH's financial statements. Finally, we deducted direct selling expenses from the CV price to derive the FUPDOL to use as the NV.

SeAH: We used CV as the basis for NV for one sale because there were no usable contemporaneous sales of the foreign like product in the comparison market, in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. Materials, labor, and factory overhead were totaled to derive the cost of manufacturing. Interest, G&A expenses, selling expenses, profit, and U.S. packing expenses were then added to derive the CV. Profit was calculated based on the total value of sales and total cost of production provided by SeAH in its questionnaire response. Finally, we deducted credit expenses and U.S. direct selling expenses from CV to derive the FUPDOL to use as the NV.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In Husteel's and SeAH's questionnaire responses, each company classified all of its export sales of OCTG to the United States as CEP sales.

All of Husteel's sales are properly classified as CEP sales because they were made for the account of Husteel by Husteel USA. Husteel reported one channel of distribution in the U.S. market: ''produced to order'' sales, shipped directly from Korea to the unaffiliated U.S. customers. All of SeAH's sales are properly classified as CEP sales because they were made for the account of SeAH by PPA. SeAH reported two channels of distribution for its U.S. sales: (1) CEP sales of further manufactured merchandise from PPA's inventory and (2) CEP sales shipped directly to the U.S. customer from Korea.

The Department recalculated SeAH's starting price taking into account, where necessary, billing adjustments and early payment discounts. Where applicable, the Department made deductions from the starting price for movement expenses, including foreign inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance and U.S. customs duties in accordance with section 772(c)(2) of the Act. *See Memorandum from Nicholas Czajkowski, Case Analyst, to the File:*

Analysis of Husteel Corporation (''Husteel'') for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea, and *Memorandum from Nicholas Czajkowski, Case Analyst, to the File: Analysis of SeaH Steel Corporation (''SeAH'') for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated August 31, 2005, on file in the CRU. In accordance with section 772(d)(1) of the Act, the Department also deducted U.S. direct selling expenses, including credit expense, packing expense, inventory carrying costs, profit and indirect selling expense. We also deducted the cost of further manufacturing, where applicable, for SeAH. Finally, we added duty drawback to the starting price to derive a net U.S. price to use as the CEP.

Level of Trade/CEP–offset

In accordance with section 773(a)(1) of the Act, to the extent practicable, we determined NV based on sales made in the comparison market at the same level of trade (''LOT'') as the U.S. sales. The NV LOT is that of the starting–price sales in the comparison market. The Court of Appeals for the Federal Circuit has held that the statute unambiguously requires Commerce to deduct the selling expenses set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. *See Micron Technology, Inc. v. United States*, 243 F.3rd 1301, 1315 (Fed. Cir. 2001). Consequently, the Department will continue to adjust the CEP, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by the Department's regulations at 19 CFR 351.412. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

To determine whether the comparison–market sales on which NV is based are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the first unaffiliated customer. If the comparison–market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the level of trade of the export transaction, we make a level–of-trade adjustment under section 773(a)(7) of the Act. Finally, if the data available is not sufficient to provide an appropriate basis to quantify a level–of-trade adjustment, we adjust NV under section 773(a)(7) of the Act (the CEP–offset provision).

In the current review, SeAH reported one LOT in the Canadian market and two LOT in the United States. SeAH claimed that, once adjustments for PPA's activities for U.S. sales, pursuant to section 772(d) of the Act, are made, the LOT in both U.S. channels would be less advanced than the Canadian LOT. SeAH claimed that they cannot quantify a level–of-trade adjustment, but that a CEP offset is warranted in this case. For this review, we obtained information from SeAH regarding the marketing stages involved in its selling activities for its reported U.S. and Canadian sales, including a description of the selling activities performed by the respondent for each channel of distribution it claimed. (See SeAH's January 18, 2005, and April 22, 2005, questionnaire responses).

Level of Trade in the Canadian Market

SeAH reported one channel of distribution and one LOT in the Canadian market. All sales into the Canadian market were CEP sales made between PPA and the customer and shipped directly to the customer from Korea. As such, we preliminarily find that all of SeAH's sales in the Canadian market were made at one LOT.

Level of Trade in the U.S. Market

As previously stated, SeAH reported two channels of distribution for its sales into the U.S. market, U.S. Channel 1 and U.S. Channel 2. SeAH also reported two LOT. We examined the selling functions performed by SeAH and/or PPA for each U.S. channel of distribution and found that there were significant differences with respect to the inventory and further manufacturing activities which PPA performed. In SeAH's U.S. Channel 1 sales, subject merchandise was inventoried and further manufactured by PPA in the United States before being sold to the unaffiliated customer. In SeAH's U.S. Channel 2 sales, subject merchandise was shipped directly from Korea to the unaffiliated customer. Therefore, we preliminarily find that SeAH made its U.S. sales at two different LOT.

Comparison of Levels of Trade Between Markets

SeAH reported that PPA is involved in all aspects of the selling functions for both of channels of distribution in the United States. In accordance with section 772(d) of the Act, we deducted selling expenses from the CEP prior to performing the LOT analysis.

In accordance with section 772(d) of the Act, we deducted inventory costs, further manufacturing costs, freight and movement expenses, and selling and marketing expenses performed by PPA for SeAH's U.S. Channel 1 sales. After deducting these expenses, we compared the Canadian LOT to the U.S. Channel 1 LOT. Based on our analysis, we find that the U.S. Channel 1 sales are at a less advanced LOT than the Canadian sales.

In accordance with section 772(d) of the Act, we deducted freight and movement expenses, and selling and marketing expenses performed by PPA for SeAH's U.S. Channel 2 sales. After deducting these expenses, we compared the Canadian LOT to the U.S. Channel 2 LOT. Based on our analysis, we find that the U.S. Channel 2 sales are at a less advanced LOT than the Canadian sales.

Therefore, since the sales in Canada are being made at a more advanced LOT than the sales to the United States, a LOT adjustment is appropriate for the Canadian sales in this review. However, since the data available is not sufficient to provide an appropriate basis for making a LOT adjustment, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). This offset is equal to the amount of indirect selling expenses incurred in the comparison market not exceeding the amount of indirect selling expenses and commissions deducted from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

PRELIMINARY RESULTS OF REVIEW

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Margin
SeAH Steel Corporation	3.91%
Husteel Co., Ltd.	12.30%

Verification

As provided in section 782(i) of the Act, the Department anticipates conducting a verification of Husteel and SeAH following the issuance of the preliminary results.

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and CBP shall assess, antidumping duties on

all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Furthermore, the following cash deposit rates will be effective with respect to all shipments of OCTG from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for Husteel and SeAH, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all others rate established in the LTFV investigation, which is 12.17 percent. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561 (June 28, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These preliminary results of this administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4890 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture From the People's Republic of China; Initiation of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 8, 2005.

SUMMARY: The Department of Commerce (the ''Department'') has determined that four requests for a new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''), received before August 1, 2005,[1] meet the statutory and regulatory requirements for initiation. The period of review (''POR'') of these new shipper reviews is June 24, 2004, through June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling at (202) 482–0414 or (202) 482–3434, respectively, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on wooden bedroom furniture from the PRC was published on January 4, 2005. On July 8, 2005, we received a new shipper review request from Shenyang Kunyu Wood Industry Co., Ltd. (''Kunyu''); on July 28, 2005, we received new shipper review requests from Dongguan Landmark Furniture Products Ltd. (''Landmark'') and Meikangchi (Nantong) Furniture Company Ltd. (''Meikangchi''); on August 1, 2005, we received a new shipper review request from WBE Industries (Hui-Yang) Co., Ltd. (''WBE''). All of these companies certified that they are both the producers and exporters of the subject merchandise upon which the respective requests for a new shipper review are based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930 (the ''Act'') and 19 CFR 351.214(b)(2)(i), Kunyu, Landmark, Meikangchi, and WBE certified that they did not export wooden bedroom furniture to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Kunyu, Landmark, Meikangchi, and WBE certified that, since the initiation of the investigation, they have never been affiliated with any exporter or producer who exported wooden bedroom furniture to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), each of the above-mentioned companies also certified that their export activities were not controlled by the central government of the PRC.

[1] The Order for wooden bedroom furniture was published on January 4, 2005. Therefore, a request for a new shipper review based on the semi-annual anniversary month, July, would be due to the Department by the final day of July 2005. *See* 19 CFR 351.214(d)(1). However, because the final day of July 2005 fell on a Sunday, the Department has accepted requests filed on the next business day: Monday, August 1, 2005.

In addition to the certifications described above, the companies submitted documentation establishing the following: (1) The date on which they first shipped wooden bedroom furniture for export to the United States and the date on which the wooden bedroom furniture was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment and the volume of subsequent shipments (if applicable); and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted Customs database queries to confirm that Kunyu's, Landmark's, Meikangchi's, and WBE's shipments of subject merchandise had entered the United States for consumption and had been suspended for antidumping duties.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the requests submitted by Kunyu, Landmark, Meikangchi, and WBE meet the threshold requirements for initiation of a new shipper review for shipments of wooden bedroom furniture from the PRC produced and exported by these companies.

The POR is June 24, 2004, through June 30, 2005. *See* 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

Because Kunyu, Landmark, Meikangchi, and WBE have certified that they produced and exported the wooden bedroom furniture on which they based their respective requests for a new shipper review, we will instruct Customs and Border Protection to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of wooden bedroom furniture that was both produced and exported by these companies until the completion of the new shipper reviews, pursuant to section 751(a)(2)(B)(iii) of the Act.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4893 Filed 9–7–05; 8:45 am]

(BILLING CODE: 3510–DS–S)

DEPARTMENT OF COMMERCE

International Trade Administration

(C–403–802)

Final Results of Expedited Sunset Review of Countervailing Duty Order: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 2, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on fresh and chilled Atlantic salmon from Norway pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 5415 (February 2, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties, as well as inadequate response (in this case, no response) from respondent interested parties, the Department conducted an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Goldberger, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1767 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2005, the Department initiated a sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 5415 (February 2, 2005). On February 17, 2005, the Department received a notice of intent to participate on behalf of Heritage Salmon Company, Inc. and Atlantic Salmon of Maine within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status as domestic producers of fresh and chilled Atlantic salmon pursuant to section 771(9)(C) of the Act. The Department received a complete substantive response from the domestic parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this CVD order.

The Department determined that the sunset review of the CVD order on fresh and chilled Atlantic salmon from Norway is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on May 13, 2005, the Department extended the time limit for completion of the final results of this review until not later than August 31, 2005.[1]

Scope of the Order

The merchandise covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called ''king'' or ''quinnat''), Coho (''silver''), Sockeye (''redfish'' or ''blueback''), Humpback (''pink'') and Chum (''dog''). Atlantic salmon is a whole or nearly–whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh–water ice (''chilled''). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.12.0060.8 and 0302.12.0065.3 of the Harmonized Tariff Schedule of the

[1] *See Extension of Time Limits for Preliminary Results and Final Results of the Full Sunset Review of the Antidumping Duty Order on Fresh and Chilled Atlantic Salmon from Norway and the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Fresh and Chilled Atlantic Salmon from Norway*, 70 FR 25537 (May 13, 2005).

United States (''HTSUS'') (56 FR 7678, February 25, 1991). At the time of the original investigation, it was provided for under HTSUS item number 0302.12.0002.9. Currently, it is provided for under HTSUS item numbers 0302.12.0003 and 0302.12.0004.[2] The subheadings above are provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the subject order.

Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order on fresh and chilled Atlantic salmon would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Manufacturer/exporters	Net Countervailable Subsidy (percent)
All producers/manufacturers/exporters	2.27

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–17743 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–DS–S

[2] *See* March 4, 2005, submission by domestic interested parties at 3.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 050825229–5229–01]

Announcing Review of Proposed Changes to Federal Information Processing Standard (FIPS) Publication 201, Standard for Personal Identity Verification of Federal Employees and Contractors

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice. Request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) announces proposed changes to Federal Information Processing Standard (FIPS) Publication 201, Standard for Personal Identity Verification of Federal Employees and Contractors. The changes to Section 2.2, PIV Identify Proofing and Registration Requirements, and to Section 5.3.1, PIV Card Issuance, will clarify the identity proofing and registration process that departments and agencies should follow when issuing identity credentials. These changes are required to make FIPS 201 consistent with the Memorandum for All Departments and Agencies (M–05–24), issued by the Office of Management and Budget on August 5, 2005, Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors. Before recommending these proposed changes to FIPS 201 to the Secretary of Commerce for review and approval, NIST invites comments from the public, users, the information technology industry, and Federal, State and local government organizations concerning the proposed changes.

DATES: Comments on these proposed changes must be received by October 11, 2005.

ADDRESSES: Written comments concerning the proposed changes to FIPS 201 should be sent to: Information Technology Laboratory, ATTN: Proposed Changes to FIPS 201, Mail Stop 8930, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

Electronic comments should be sent to: *fips.comments@nist.gov.*

The proposed changes to FIPS Publication 201 are available electronically from the NIST Web site at: *http://csrc.nist.gov/publications/.*

Comments received in response to this notice will be published electronically at *http://csrc.nist.gov/publications/fips/index.html.*

FOR FURTHER INFORMATION CONTACT: W. Curtis Barker, (301) 975–8443, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, email: *wbarker@nist.gov.*

Information about FIPS 201 and the PIV program is available on the NIST Web pages: *http://csrc.nist.gov/.*

SUPPLEMENTARY INFORMATION: Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 27, 2004, directed the Secretary of Commerce to promulgate, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued by the Federal Government to its employees and contractors (including contractor employees). FIPS 201 was developed to satisfy the technical, administrative, and timeliness requirements of HSPD 12. The standard was developed in a ''manner consistent with the Constitution and applicable laws, including the Privacy Act (5 U.S.C. 552a) and other statutes protecting the rights of Americans'' as required in HSPD 12.

To assist departments and agencies in implementing the provisions of FIPS 201, Joshua Bolten, the Director of the Office of Management and Budget (OMB), issued a Memorandum for All Departments and Agencies on August 5, 2005 entitled ''Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors.'' The Memorandum provides implementation guidance and clarifies the requirements for identity proofing, registration and accreditation processes. Two provisions of FIPS 201 as promulgated by the Secretary of Commerce earlier this year are not consistent with the guidance contained in the Bolten Memorandum and those provisions of FIPS 201 are hereby proposed for revision. Sections 2.2, ''PIV Identify Proofing and Registration

Requirements,'' and 5.3.1 of FIPS 201, ''PIV Card Issuance,'' are being revised to assure that they are consistent with the OMB guidance concerning National Agency Checks as part of the identity proofing and registration process. Therefore, NIST has prepared changes to FIPS 201 to clarify the identity proofing and registration process that departments and agencies should follow when issuing identity credentials. In short, under the proposed FIPS revision if an agency does not receive the results of the National Agency Checks (NAC) within five days, the identity credential can be issued based on the FBI National Criminal History Check (fingerprint check). Identity credentials issued to individuals without a completed NAC or equivalent must be electronically distinguishable from identity credentials issued to individuals who have a completed investigation. Director Bolten's Memorandum is available electronically from the OMB Web page: *http://www.whitehouse.gov/omb/memoranda/index.html.*

The proposed changes to FIPS Publication 201 are available electronically from the NIST Web site at: *http://csrc.nist.gov/publications/.*

Authority: In accordance with the Information Technology Management Reform Act of 1996 (Public Law 104–106) and the Federal Information Security Management Act (FISMA) of 2002 (Public Law 107–347), the Secretary of Commerce is authorized to approve Federal Information Processing Standards (FIPS). Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 27, 2004, directed the Secretary of Commerce to promulgate, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued to Federal Government employees and contractors.

Executive Order 12866: This notice has been determined to be significant for the purposes of Executive Order 12866.

Dated: September 1, 2005.

William Jeffrey,

Director.

[FR Doc. 05–17744 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Irizarry Garcia From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of appeal and request for comments.

SUMMARY: This announcement provides notice that Irizarry Garcia has filed an administrative appeal with the Department of Commerce asking that the Secretary override the Puerto Rico Planning Board's objection to a consistency certification prepared in conjunction with the proposed reconstruction of a private pier.

DATES: Public and Federal agency comments on the appeal are due within 30 days of the publication of this notice.

ADDRESSES: All e-mail comments on issues relevant to the Secretary's decision in this appeal may be submitted to *garcia.comments@noaa.gov.* Comments may also be sent by mail to Jennifer Nist, Deputy Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Materials from the appeal record will be available at the NOAA Office of the General Counsel for Ocean Services. In addition, public filings made by the parties to the appeal will be available at the offices of the Puerto Rico Planning Board.

FOR FURTHER INFORMATION CONTACT: Jennifer Nist, Deputy Assistant General Counsel for Ocean Services, NOAA Office of the General Counsel, 301–713–2967.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

Irizarry Garcia has filed a notice of appeal with the Secretary of Commerce pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, Subpart H. Mr. Garcia appealed an objection raised by the Puerto Rico Planning Board to a consistency certification contained within his application to the U.S. Army Corps of Engineers for a permit necessary to reconstruct a private pier. The Appellant requests that the Secretary override the State's consistency objection on the basis that the proposed activity is ''consistent with the objectives'' of the CZMA. To make this determination, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Puerto Rico's management program. 15 CFR 930.121.

II. Public and Federal Agency Comments

Written public comments are invited on any of the issues that the Secretary must consider in deciding this appeal. Comments must be received within 30 days of the publication of this notice, and may be submitted by e-mail to *garcia.comments@noaa.gov.* Comments may also be sent to Jennifer Nist, Deputy Assistant General Counsel for Ocean Services, NOAA Office of the General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments will be made available to the Appellant and the State.

III. Appeal Documents

NOAA intends to provide the public with access to all materials and related documents comprising the appeal record during business hours, at the NOAA Office of the General Counsel for Ocean Services. In addition, copies of public filings by the parties will be available for review at the offices of the Puerto Rico Planning Board.

For additional information about this appeal contact Jennifer Nist, 301–713–2967.

Dated: August 30, 2005.

Jane H. Chalmers,

General Counsel.

[FR Doc. 05–17828 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean

Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Education and Chumash Community. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by October 28, 2005.

ADDRESSES: Application kits may be obtained from Jacklyn Kelly, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93019–2315. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Jacklyn Kelly, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109–2315, 805–966–7107, extension 371, *jacklyn.kelly@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manger in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 31, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–17803 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083005D]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils' Spiny Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, September 22, 2005, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza at the Crossings, 801 Greenwich Ave, Warwick, RI 02886; telephone: (401) 732–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: 302–674–2331 ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop recommendations regarding management measures, including quotas and trip limits, for the Councils for the 2006/07 fishing year specifications for spiny dogfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders at the Mid-Atlantic Council Office (302) 674–2331 ext: 18) at least 5 days prior to the meeting date.

Dated: September 2, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4887 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.083005C]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Panel, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Thursday, September 22, 2005, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, One Thuber Street, Warwick, RI 02886; telephone: (401) 734–9600.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the results of the spring flume tank tests, prepare for the October Northeast Fisheries Science Center's experimental trawl survey cruise, and begin to thoroughly evaluate the protocols for the new survey.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders at the Mid-Atlantic Council office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 2, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4888 Filed 9–7–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Wednesday, September 21, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Derivatives Clearing Organization Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–17901 Filed 9–6–05; 11:08 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Mobile Sensors Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of availability and request for comments.

SUMMARY: The Missile Defense Agency (MDA) has completed an environmental ASSESSMENT (EA) in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations implementing NEPA, Department of Defense Instruction 4715.9, Environmental Planning and Analysis, and the applicable service regulations that implement these laws and regulations. Based on this analysis, MDA determined that the proposed activities would not result in a significant impact to the environment and prepared a Draft Finding of No Significant Impact (FONSI). Therefore, further NEPA analysis in the form of an Environmental Impact Statement (EIS) is not required.

DATES: The public review and comment period for this EA and draft FONSI begins with the publication of this notice in the **Federal Register**. All comments on this EA and draft FONSI must be received by the MDA no later than September 23, 2005.

A downloadable electronic version of the EA and Draft FONSI are available on the MDA Internet site: *http://www.mda.mil/mdalink/html/enviro.html.*

ADDRESSES: Written comments regarding the EA and Draft FONSI should be submitted to Mobile Sensors EA, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031; via toll-free fax 1–877–851–5451; or via E-mail: Mobile-sensors-*ea@ICFConsulting.com.*

SUPPLEMENTARY INFORMATION: The EA analyzes the potential environmental consequences of using mobile land-based sensors (*i.e.*, radar, telemetry, command and control, and optical systems) and the use of airborne sensor systems (High Altitude Observatory [HALO] I and II, and Widebody Airborne Sensor Platform [WASP]). This EA considers impacts associated with the proposed use of land-based mobile sensors and airborne sensor systems on targets of opportunity.

Dated: September 1, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–17788 Filed 9–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Nationwide TRICARE Demonstration Project

AGENCY: Office of the Secretary of Defense for Health/TRICARE Management Activity, DoD.

ACTION: Notice extending deadline for Demonstration Project.

SUMMARY: On November 5, 2001, the Department of Defense (DoD) published a notice of a Nationwide TRICARE Demonstration Project (66 FR 55928–55930). On October 1, 2004, the Department of Defense (DoD) published a notice (69 FR 58895) to extend the Demonstration through October 31, 2005. The Demonstration is also referred to as the Operation Noble Eagle/Enduring Freedom Reservist and National Guard Benefits Demonstration. This notice is to advise interested parties of the continuation of the Demonstration in which the DoD Military Health System addresses unreasonable impediments to the continuity of healthcare encountered by certain family members of Reservists and National Guardsmen called to active duty in support of a federal/contingency operation. The Demonstration scheduled to end on October 31, 2005, is now extended through October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Office of the Assistance Secretary of Defense for Health Affairs, TRICARE Management Activity, TRICARE Operations Directorate at (703) 681–0039.

SUPPLEMENTARY INFORMATION: Continuing levels of about 170,000 Reserve Component members activated in support of Noble Eagle/Operation Enduring Freedom and Operation Iraqi Freedom in FY 2005 warrants the continuation of the Demonstration to support the healthcare needs and morale of family members of activated reservists and guardsmen. The National Defense Authorization Act of 2005 amended existing statutes that will enable the Secretary of Defense to provide these benefits permanently by regulation. The Demonstration needs to be extended to provide sufficient time for the rule-making process to establish the new regulation. The impact if the Demonstration is not extended, before permanent regulation is promulgated, includes higher out-of-pocket costs and potential inability to continue to use the same provider for ongoing care. There are three separate components to the demonstration. First, those who participate in TRICARE Standard will not be responsible for paying the TRICARE Standard deductible. By law, the TRICARE Standard deductible for active duty dependents is $150 per individual, $300 per family ($50/$150 for E–4's and below). The second component extends TRICARE payments up to 115 percent of the TRICARE

maximum allowable charge, less the applicable patient co-payment, for care received from a provider that does not participate (accept assignment) under TRICARE to the extent necessary to ensure timely access to care and clinically appropriate continuity of care. Third, the Demonstration authorizes a waiver of the non-availability statement requirement for non-emergency inpatient care. This Demonstration project is being conducted under the authority of 10 U.S.C. 1092. This Demonstration is extended through October 31, 2007.

Dated: September 1, 2005.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 05–17789 Filed 9–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Aonex Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Aonex Technologies, Inc., a revocable, non-assignable, exclusive license, to practice in the field of substrates for electro-optical device processing comprised of thin films on polycrystalline materials, devices made using such substrates, manufacturing techniques utilizing such substrates, and methods for manufacturing such substrates in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent No. 6,328,796: Single-Crystal Material on Non-Single-Crystalline Substrate, Navy Case No. 78,978 and in the field of substrates for electro-optical device processing comprised of thin films on substrates wherein at least one layer is polycrystalline, devices made using these substrates, manufacturing processes utilizing these substrates, and methods for manufacturing such substrates in the United States and certain foreign countries the Government-owned invention described in U.S. Patent No. 6,497,763: Electronic Device with Composite Substrate, Navy Case No. 82,672.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 23, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: August 31, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–17775 Filed 9–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 7, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Extension.
Title: Preschool Curricula Evaluation Research (PCER) Program.
Frequency: Semi-Annually.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 15,924.
Burden Hours: 5,110.
Abstract: The purpose of the PCER program is to implement rigorous evaluations of preschool curricula that will provide information to support informed choices of classroom curricula for early childhood programs. This research program supports research that will determine, through randomized experiments, whether one or more curricula produce educationally meaningful effects for children's language skill, pre-reading and pre-math abilities, cognition, general knowledge and social competence. The respondents for this research initiative include children, teachers and parents. The data collected from these respondents will provide critical information about preschool curricula to policy makers and early childhood practitioners.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2877. When you access the

information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–17785 Filed 9–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 11, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Planning, Evaluation, and Policy Development

Type of Review: Regular.

Title: Annual Collection of Elementary and Secondary Education Data for the Education Data Exchange Network (EDEN).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 297,060.

Abstract: The Performance Based Data Management Initiative (PBDMI) is in the second phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, PBDMI seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDEN and accessed by federal education program managers and analysts as needed to make decisions. This will eliminate redundant data collections while providing for the timeliness of data submission and use.

Additional Information: The Department of Education (ED) is specifically requesting the data providers in each State Education Agency (SEA) to review the proposed data sets to determine which of these data can be provided for the upcoming 2005–06 school year and which data would be available in later years (2006–07 or 2007–08) and which data, if any, is never expected to be available from the SEA. ED also seeks to know if the SEA data definitions are consistent and compatible with the EDEN definitions and accurately reflect the way data is stored and used for education by the States, Districts, and Schools. Our responses to the public comments that were submitted in June and July are found in Attachment E (covering policy and process issues) and Attachment C (addressing changes in the proposed data requirements). There are some significant changes in this version of Attachment D. In it we describe the EDEN plan to reduce the paperwork burden on the states and districts.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2776. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–17786 Filed 9–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 11, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of

Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Talent Search Program.

Frequency: Once every four years.

Affected Public:

Not-for-profit institutions; Businesses or other for-profit; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 8,500.

Abstract: The application form is needed to conduct a national competition for the Talent Search Program for program year 2006–07. The program provides Federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions, agencies, and organizations and in exceptional cases secondary schools. These grants enable grantees to establish and operate projects designed to identify qualified youths with potential for education at the postsecondary level and encourage them to complete secondary school and undertake a program of postsecondary education, publicize the availability of financial assistance and encourage persons who have not completed programs of education at the secondary or postsecondary level to reenter such programs.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2875. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–17787 Filed 9–7–05; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting for the Technical Guidelines Development Committee.

DATE AND TIME: Thursday, September 29, 2005, 9 a.m. to 5 p.m.

PLACE: National Institute of Standards and Technology, 325 Broadway, Boulder, Colorado 80305–3328.

STATUS: This meeting will be open to the public. There is no fee to attend, but, due to security requirements, advance registration is required. Registration information will be available at *http://vote.nist.gov*.

SUMMARY: The Technical Guidelines Development Committee (the ''Development Committee'' has scheduled a plenary meeting for September 29, 2005. The Development Committee was established to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Development Committee held four previous meetings on July 9, 2004; January 18 and 19, 2005; March 9, 2005; and April 20 and 21, 2005. The proceedings of these meetings are available for public review at *http//vote.nist.gov/PublicHearingsandMeetings.html*. On May 9, 2005, the Development Committee delivered initial recommendations for voluntary voting system guidelines to the Election Assistance Commission (EAC). The purpose of this fifth meeting of the Development Committee will be to review and approve a work plan for future voluntary voting system guidelines recommendations to the EAC. The work plan responds to tasks defined in resolutions passed at Technical Guideline Development Committee meetings.

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary meeting for September 29, 2005. The Committee was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held its first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 and 19, 2005. Resolutions were adopted by the Development Committee at the January plenary session. The resolutions defined technical work tasks for NIST that would assist the Development Committee in developing recommendations for voluntary voting system guidelines. At the March 9, 2005

meeting, NIST scientists presented preliminary reports on technical work tasks defined by resolutions adopted at the January plenary meeting and one additional resolution was adopted by the Development Committee. The Development Committee approved with edits initial recommendations for voluntary voting system guidelines at the April 20 and 21, 2005 meeting. The document, Voluntary Voting System Guidelines Version 1: Initial Report was submitted by the Development Committee to the EAC as required by HAVA on May 9, 2005. The EAC is currently accepting public comment on proposed voluntary voting system guidelines through September 30, 2005. Proposed guidelines and public comment procedures are available at *http://www.eac.gov*.

CONTACT INFORMATION: Allan Eustis, 100 Bureau Drive, Mail Stop 8900, Gaithersburg, MD 20899–8900, phone 301–975–5099. Written comments concerning the Development Committee's operations should be addressed to the contact person indicated above, or to *voting@nist.gov*.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05–17944 Filed 9–6–05; 2:50 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Notice of Availability of a Supplement Analysis for Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site Near Columbus, OH

AGENCY: Department of Energy.

ACTION: Notice of availability of a Supplement Analysis.

SUMMARY: DOE has prepared a Supplement Analysis (SA) pursuant to DOE regulations implementing the National Environmental Policy Act (NEPA) at 10 CFR 1021.314. The SA addresses DOE's proposal to ship approximately 37 cubic meters (1,307 cubic feet [ft^3]) of transuranic (TRU) waste from the Battelle Columbus Laboratory West Jefferson site near Columbus, Ohio, to the Savannah River Site (SRS), a DOE site near Aiken, South Carolina, or to Waste Control Specialists, LLC (WCS), a commercial facility in Andrews, Texas. The waste was generated as part of the cleanup of the West Jefferson site and consists of approximately 12 cubic meters of Contact Handled (CH) TRU waste and approximately 25 cubic meters of Remote Handled (RH) TRU waste. For purposes of analysis, DOE assumed that at SRS, the CH–TRU waste would be characterized and transported to WIPP for disposal, and the RH–TRU waste would be stored for up to 5 years; at WCS, the CH–TRU and RH–TRU waste would be stored for up to 5 years. The waste would be maintained in a safe, secure manner until it can be processed and disposed of at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, NM.

The Battelle West Jefferson facility is privately owned; however, as part of the closeout of its nuclear materials research contract, DOE is assisting in the remediation of the site. Contract terms specify that all radioactive waste generated during the facility cleanup is ''DOE-owned'' for the purposes of disposal. The TRU waste must be shipped off-site by December 31, 2005, as Battelle's Nuclear Regulatory Commission (NRC) license will expire at that time.

In the final Waste Management Programmatic Environmental Impact Statement (WM PEIS, DOE/EIS–0200, May 1997), DOE analyzed the potential environmental impacts of the management (treatment and storage) of TRU waste at DOE sites. The Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste (63 FR 3629 (1998)) (TRU Waste ROD) documented DOE's decision that, except for the Sandia National Laboratory, which would ship its waste to Los Alamos National Laboratory, each DOE site that generated or will generate TRU waste will prepare and store its TRU waste on the site until it can be disposed of at WIPP. DOE noted that in the future, it may decide to ship TRU waste from sites where it may be impractical to prepare the waste for disposal to sites where DOE has or will have the necessary capability. The sites that could receive such shipments of TRU waste are the Idaho National Laboratory near Idaho Falls, Idaho; the Oak Ridge Reservation, near Oak Ridge, Tennessee; SRS; and the Hanford site, near Richland, Washington.

Based on the SA, DOE has determined that a supplement to the WM PEIS or a new EIS is not needed. DOE plans to issue an amended Record of Decision (ROD) under the Waste Management Programmatic Environmental Impact Statement (WM PEIS) for this waste no sooner than 30 days from the publication of this Notice.

DATES: DOE will consider all public comments on this matter submitted by October 11, 2005 before issuing a ROD.

ADDRESSES: Comments should be directed to: Mr. Harold Johnson, Carlsbad Field Office, U.S. Department of Energy, 4021 National Parks Highway, Carlsbad, NM 88220, Telephone: 505–234–7349, E-mail: *harold.johnson@wipp.ws.*

FOR FURTHER INFORMATION CONTACT: Copies of the Supplement Analysis for Transportation, Storage, Characterization, and Disposal of Transuranic Waste Currently Stored at the Battelle West Jefferson Site near Columbus, Ohio (DOE/EIS–0200–SA–02) will be available on DOE's Office of Environmental Management Web site at: *http://www.em.doe.gov and on DOE's* NEPA Web site at *http://www.eh.doe.gov/nepa/whatsnew/html.* To request printed copies of this document, please write or call: The Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, Telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

For further information regarding the storage characterization, and disposal of Battelle West Jefferson TRU waste, contact: Mr. Harold Johnson, Carlsbad Field Office, U.S. Department of Energy, 4021 National Parks Highway, Carlsbad, NM 88220, Telephone: 505–234–7349.

For further information on the DOE program for the management of TRU waste, contact: Ms. Lynne Smith, WIPP Office EM–13, Office of Environmental Management, U.S. Department of Energy, 19001 Germantown Road, Germantown, MD 20874, Telephone: 301–903–6828.

For information on DOE's NEPA process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is responsible for the disposal of approximately 37 cubic meters (m3) (1,307 cubic feet [ft^3]) of transuranic (TRU) waste generated as part of the cleanup of the Battelle Columbus Laboratory West Jefferson site near Columbus, Ohio, and currently stored on-site. TRU waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram of waste.

TRU waste is categorized as either contact handled (CH) or remote handled (RH), based on the radiation level at the

surface of the waste container. Some TRU waste is also mixed waste, having both radioactive and hazardous components.

The Battelle West Jefferson facility is privately owned; however, as part of the closeout of its nuclear materials research contract, DOE is assisting in the remediation of the site. Contract terms specify that all radioactive waste generated during the facility cleanup is ''DOE-owned'' for the purposes of disposal. DOE needs to ship the TRU waste off-site by December 31, 2005, to comply with Battelle's Nuclear Regulatory Commission (NRC) license, which will expire at that time. Removal of the TRU waste from the Battelle West Jefferson site is also required to allow site closure in fiscal year (FY) 2006.

In the Waste Management Programmatic Environmental Impact Statement (WM PEIS), DOE analyzed the potential environmental impacts of the management (treatment and storage) of TRU waste at DOE sites. The Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste (63 FR 3629 (1998)) (TRU Waste ROD) documented DOE's decision that, with the exception of the Sandia National Laboratory, which would send its waste to Los Alamos National Laboratory, each DOE site that has generated or will generate TRU waste will prepare and store its TRU waste on the site, pending disposal at WIPP.

In an amended WM PEIS TRU Waste ROD issued in 2002, DOE decided to ship the Battelle West Jefferson TRU waste to the Hanford Site for storage and characterization prior to disposal at the Waste Isolation Pilot Plant (WIPP), located near Carlsbad, New Mexico [67 FR 56989 (2002)]. After issuing that decision, DOE completed three shipments of the Battelle West Jefferson TRU waste to Hanford (approximately 5 m^3 [177 ft^3]). In March 2003, DOE suspended further shipments of this TRU waste to Hanford, and subsequently a preliminary injunction stopping further shipments of TRU waste to Hanford was issued by the U.S. District Court for the Eastern District of Washington in response to actions filed by the State of Washington and Columbia Riverkeeper.

Shipments of TRU waste to Hanford for storage and characterization prior to disposal at WIPP remained suspended pending completion of the Hanford Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement (Hanford Solid Waste EIS) (DOE 2004a) and lifting of the preliminary injunction. The Hanford Solid Waste EIS was completed in January 2004, and a Record of Decision (ROD) was issued in June 2004.[1] On May 13, 2005, the district court issued a decision allowing the shipment of non-mixed TRU waste from the Battelle West Jefferson site to Hanford. However, the court has retained a preliminary injunction against off site shipments of mixed TRU to Hanford.

Although shipment of non-mixed TRU waste to Hanford is no longer enjoined, DOE has discovered information that calls into question the accuracy of some of the analyses contained in the Hanford Solid Waste EIS. Until these questions can be addressed, DOE has decided not to ship additional waste from Battelle West Jefferson to Hanford. Nevertheless, by the end of 2005, DOE needs to ship all Battelle West Jefferson TRU waste to off-site storage so that Battelle can comply with its NRC license and site closure can occur in FY 2006.

DOE is now proposing to ship the Battelle West Jefferson TRU waste to the Savannah River Site (SRS), a DOE site near Aiken, South Carolina, or to Waste Control Specialists, LLC (WCS), a commercial facility in Andrews, Texas. For purposes of analysis, at SRS, the CH-TRU waste would be characterized and transported to WIPP for disposal, and the RH-TRU waste would be stored for up to 5 years pending ultimate disposal at WIPP. At WCS, the CH- and RH-TRU waste would be stored for up to 5 years pending ultimate disposal at WIPP.

DOE has a Hazardous Waste Facility Permit modification request pending before the New Mexico Environment Department that seeks to modify the characterization requirements for CH-TRU waste, apply those modified requirements to RH-TRU waste, and allow DOE to dispose of RH-TRU waste at WIPP. If DOE's request is granted without substantial modification, it may be possible to characterize the Battelle West Jefferson waste based on knowledge of the contents of the waste, without performing sampling and analysis currently required for CH-TRU waste under the WIPP Hazardous Waste Facility Permit. If characterization can be performed without additional sampling and analysis, DOE would ship the stored waste directly from SRS or WCS to WIPP.

If the WIPP TRU waste characterization requirements that are established by the hazardous waste facility permit modification cannot be met at SRS or WCS, then DOE would ship the waste from SRS or WCS to Hanford, Idaho National Laboratory (INL) (formerly known as the Idaho National Engineering and Environmental Laboratory), or Oak Ridge National Laboratory (ORNL) for characterization prior to shipment to WIPP for disposal. If SRS can meet the characterization requirements, but WCS cannot, the waste might also be shipped from WCS to SRS for characterization prior to shipment to WIPP for disposal.

Future decisions regarding where to characterize the Battelle West Jefferson TRU waste would be made based on (1) consideration of the characterization requirements that are eventually established for that waste, and (2) the characterization capabilities existing or to be established at the different DOE sites to meet those requirements. After TRU waste characterization requirements have been established, if additional characterization were needed, DOE would conduct appropriate further National Environmental Policy Act (NEPA) review, for any additional characterization activities if necessary, including the associated transportation and shipment of the TRU waste to WIPP for disposal.

DOE has prepared the SA in accordance with DOE NEPA regulations (10 CFR 1021.314) to determine whether the proposed shipment of the Battelle West Jefferson TRU waste for storage at SRS or WCS prior to disposal at WIPP is a substantial change to the proposal or whether there are significant new circumstances or information, relevant to environmental concerns, such that a supplement to the WM PEIS or a new EIS would be needed. DOE has concluded, based on the analysis in the SA that the impacts of shipping the waste to WCS or SRS would be very small and would not add significantly to impacts reported in prior NEPA analyses. Accordingly, DOE has determined that a supplement to the WM–PEIS or a new EIS is not needed.

DOE plans to issue an amended ROD under the WM PEIS for this waste no sooner than 30 days from the publication of this Notice. DOE will consider all public comments on this matter submitted by October 11, 2005 before issuing a ROD.

[1] Record of Decision for the Solid Waste Program, Hanford Site, Richland, Washington: Storage and Treatment of Low-Level Waste and Mixed Low-Level Waste; Disposal of Low-Level Waste and Mixed Low-Level Waste; and Storage, Processing, and Certification of Transuranic Waste for Shipment to the Waste Isolation Pilot Plant, 69 FR 39449 (2004) (Hanford Solid Waste ROD).

Issued in Washington, DC, September 1, 2005.

James A. Rispoli,

Assistant Secretary for Environmental Management.

[FR Doc. 05–17791 Filed 9–7–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT04–1–015, ER04–48–015]

Southwest Power Pool, Inc.; Notice of Filing

August 31, 2005.

Take notice that on August 26, 2005, Southwest Power Pool, Inc., (SPP) submitted an Independent Market Monitoring Service Agreement with Boston Pacific Company, Inc., as part of SPP's Open Access Transmission Tariff pursuant to the request of the Commission Staff. SPP requests an effective date of July 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 16, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4872 Filed 9–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 31, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–719–007.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Second Substitute Sheet No. 5 to FERC Gas Tariff, Original Volume No. 9, amending its compliance filing submitted on 7/1/05 in Docket No. ER96–719–005.

Filed Date: 08/24/2005.

Accession Number: 20050826–0187.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2005.

Docket Numbers: ER01–642–003.

Applicants: Cottonwood Energy Company LP.

Description: Cottonwood Energy Company, LP submits a notice of change in status and a revised market-based rate tariff and a revised market-based rate tariff.

Filed Date: 08/24/2005.

Accession Number: 20050826–0188.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 14, 2005.

Docket Numbers: ER04–810–001.

Applicants: TransAlta Centralia Generating L.L.C.

Description: TransAlta Centralia Generation, L.L.C. submitted a compliance filing to inform the Commission that the Parties to the settlement agreement approved by the Commission in the order issued 4/19/05, 111 FERC ¶ 61,087 (2005), have recalculated and agreed to a revised service factor beginning 10/1/05 in accordance with the computation set forth in TransAlta's Rate Schedule FERC No. 1.

Filed Date: 08/26/2005.

Accession Number: 20050829–0208.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2005.

Docket Numbers: ER05–1395–000.

Applicants: Covanta Delaware Valley, L.P.

Description: Covanta Delaware Valley, L.P. submits a notice of succession notifying the Commission that, as the result of name change, it adopts American Ref-Fuel Company of Delaware Valley, L.P.'s Supplement No. 3 to FERC Electric Rate Schedule Original Volume No. 1 and FERC Electric Tariff Original Volume No. 3 and submits amendments to the rate schedules and tariffs to reflect the name change.

Filed Date: 08/26/2005.

Accession Number: 20050829–0207.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2005.

Docket Numbers: ER05–1396–000.

Applicants: Covanta Essex Company.

Description: Covanta Essex Company submits a notice of succession notifying the Commission that, as a result of a name change, it adopts American Ref-Fuel Company of Essex County's Supplement No. 3 to Rate Schedule FERC No. 1 and FERC Electric Tariff, Original Volume No. 2 and submits amendments to the rate schedules and tariffs to reflect the name change.

Filed Date: 08/26/2005.

Accession Number: 20050829–0206.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2005.

Docket Numbers: ER05–1397–000.

Applicants: Covanta Hempstead Company.

Description: Covanta Hempstead Company submits a notice of succession to notifying the Commission that as the result of a name change, it adopts American Ref-Fuel Company of Hempstead's FERC Electric Tariff, Original Volume No. 1 as its own and submits amendments to the rate schedule to reflect the name change.

Filed Date: 08/26/2005.

Accession Number: 20050829–0205.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2005.

Docket Numbers: ER05–1398–000.

Applicants: Covanta Niagara, L.P.

Description: Covanta Niagara, L.P. submits a notice of succession notifying the Commission that as a result of a name change, it adopts American Ref-Fuel Company of Niagara, L.P.'s FERC Electric Tariff, Original Volume No. 1 as its own and submits amendments to the Rate Schedule to reflect the name change.

Filed Date: 08/26/2005.

Accession Number: 20050829–0204.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2005.

Docket Numbers: ER05–1399–000.

Applicants: Mississippi Power Company.

Description: Mississippi Power Company submits a request for

authorization to use its updated depreciation rates in the calculation of charges for services provided pursuant to certain jurisdictional contracts that are affected by this filing.

Filed Date: 08/29/2005.

Accession Number: 20050829–0203.

Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2005.

Docket Numbers: ER05–1402–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submitted an executed interconnection service agreement with Mill Run Windpower, LLC, and West Penn Power Company d/b/a as Allegheny Power.

Filed Date: 08/29/2005.

Accession Number: 20050831–0004.

Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2005.

Docket Numbers: ER05–1403–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits an executed interconnection service agreement with Backbone Mountain Windpower, LLC and Monongahela Power Company d/b/a Allegheny Power.

Filed Date: 08/29/2005.

Accession Number: 20050831–0005.

Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2005.

Docket Numbers: ER05–1404–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits a notice regarding the revised transmission access charges to implement the revised transmission revenue requirement of the City of Anaheim, CA effective 7/1/05 .

Filed Date: 08/29/2005.

Accession Number: 20050831–0006.

Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2005.

Docket Numbers: ER05–1405–000.

Applicants: Sulfur Springs Valley Electric Cooperative.

Description: Sulphur Springs Valley Electric Cooperative submits notification that it is an electric cooperative affected by the amendment to section 201(f) of the Federal Power Act and is not longer a public utility and withdraws its jurisdictional rate schedules.

Filed Date: 08/29/2005.

Accession Number: 20050831–0007.

Comment Date: 5 p.m. Eastern Time on Monday, September 19, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4870 Filed 9–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EY04–95–14–000, RM01–10–000, PL05–12–000]

Standards of Conduct for Transmission Providers; Extension of Non-Statutory Deadlines; Notice Granting Extension of Time To Comply With Posting and Other Requirements

August 31, 2005.

Hurricane Katrina has created emergency conditions in the Gulf Coast area of the United States. Section 358.4(a)(2) of the Commission's Standards of Conduct regulations allows transmission providers to ''take whatever steps are necessary to keep the system[s] in operation'' notwithstanding any of the other requirements. 18 CFR 358.4(a)(2) (2005). Section 358.4(a)(2) also provides: ''Transmission Providers must report to the Commission and post on the OASIS or Internet Web site, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.'' As a result of the emergency, the Commission will allow affected transmission providers to delay compliance with the section 358.4(a)(2) reporting requirement until September 30, 2005. In addition, pursuant to section 385.2008 of the Commission's Rules of Practice and Procedure, 18 CFR 385.2008 (2005), the Commission finds good cause to extend, until September 30, 2005, non-statutory deadlines that occur before that date for participants in proceedings pending before the Commission who need such extensions on account of Hurricane Katrina.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4871 Filed 9–7–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0014, FRL–7965–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Hazardous Waste Facility Standards; EPA ICR Number 1571.08, OMB Control Number 2050–0120

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for an existing approved collection. This ICR is scheduled to expire on February 28, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 7, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0014 , to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Norma Abdul-Malik, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8753; fax number: 703–308–8617; e-mail address: *abdul-malik.norma@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0014, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Business or other for profit.

Title: General Hazardous Waste Facility Standards.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements: Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;

- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.
- The regulations implementing these requirements are codified in the Code of Federal Regulations (CFR) Title 40, parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 319 hours per response.

Respondents/Affected Entities: Business or other for profit.

Estimated Number of Respondents: 1,675.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 719,059.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $760,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 1, 2005.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. 05–17818 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7965–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial settlement agreement, to address a lawsuit filed by Environmental Defense, the Natural Resources Defense Council, the Sierra Club and Transportation Solutions Defense and Education Fund (collectively ''Plaintiffs''): *Environmenatl Defense, et al.* v. *EPA, et al.,* No. 04–1291 (D.C. Cir.). On August 30, 2004, Plaintiffs filed a complaint challenging EPA's amendments to rules on determining conformity of federal transportation actions to State Implementation Plans (SIPs), issued under section 176(c) of the Act. Petitioners challenged several aspects of EPA's recent amendments to the transportation conformity rules addressing the new 8-hour ozone and P.M. 2.5 National Ambient Air Quality Standards. (69 FR 40,004, July 1, 2004).

DATES: Written comments on the proposed settlement agreement must be received by October 11, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0005, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excludign legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Sara Schneeberg, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 564–5592.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

EPA has agreed to take final action on further amendments to the transportation conformity rules to address requirements relating to PM 2.5 hotspots. EPA had indicated in the July 2004 final rule that the agency believed transportation conformity provisions relating to PM 2.5 hotspot air quality analyses would be appropriate, but the agency was not in a position to promulgate final regulations on that issue at that time. EPA indicated that it intended to take subsequent action with respect to this issue. Therefore, EPA proposes to enter into a settlement with Petitioners in which EPA will commit to take final action amending the conformity regulations to address PM 2.5 hotspot analyses by no later than March 31, 2006.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get a Copy of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0005 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statue. Information claimed at CBI and other information whose disclosure is restricted by statue is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that you comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identify, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official docket, and made available in EPA's electronic public docket.

Dated: August 31, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel/

[FR Doc. 05–17815 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7965–8]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This 15-member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, and policies and regulations required by the Safe Drinking Water Act. The terms of five (5) members—two (2) who represent local government agencies concerned with public water supply and public health protection, two (2) who are affiliated with water-related or other organizations and interest groups having an active interest in public water supply/public health protection, and one (1) who speaks for the general public—expire in December 2005. EPA would like the preponderance of nominations to be in these three areas consistent with the mandates of the SDWA and the Agency encourages nominations of individuals who can represent small, rural public water systems (see Supplementary Information below). Although the Agency is identifying preferences, all nominations will be fully considered.

DATES: Submit nominations via U.S. mail on or before October 21, 2005.

ADDRESSES: Address all nominations to Clare Donaher, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Clare Donaher, Designated Federal Officer, *donaher.clare@epa.gov,* or call 202–564–3787.

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: The Council consists of 15 members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with public water supply and public health protection; and five members represent private organizations or groups demonstrating an active interest in the field of public water supply and public health protection. The SDWA requires that at least two members of the Council represent small, rural public water systems. Additionally, members may be asked to serve on one of the Council's workgroups that are formed each year to assist EPA in addressing specific program issues. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits nominations to fill the five vacancies with terms ending on December 15, 2008.

Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Conference calls will be scheduled if needed.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume, providing the nominee's background, experience and qualifications.

Dated: September 1, 2005.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 05–17816 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7965–5]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) National Environmental Justice Advisory Council (NEJAC) will be renewed for an a one-year period, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II § 9(c). The purpose of the NEJAC is to provide independent advice and recommendations to the Administrator on areas relating to environmental justice.

EPA has determined that the NEJAC is in the public interest and supports the Agency in performing its duties and responsibilities.

Inquiries may be directed to Charles Lee, NEJAC Designated Federal Officer, U.S. EPA, (mail code 2201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Dated: September 1, 2005.

Barry E. Hill,

Director, Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

[FR Doc. 05–17817 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7966–1]

Science Advisory Board (SAB) Staff Office; Notification of an Upcoming Workshop and Meeting of the Science Advisory Board's Ecological Processes and Effects Committee (EPEC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public workshop and meeting of the SAB Ecological Processes and Effects Committee (EPEC). The EPEC will hold a public workshop and meeting to evaluate the state-of-the-practice of ecological risk assessment. The workshop and meeting are open to the public, however, seating for the public will be limited and available on a first come basis to those who pre-register.

DATES: February 7–9, 2006. The SAB Ecological Processes and Effects Committee public workshop will convene at 8:30 a.m. on Tuesday, February 7, 2006 and adjourn at approximately 5 p.m. (Eastern Time) on Wednesday, February 8, 2006. The SAB EPEC will meet on Thursday, February 9, 2006 at 8:30 a.m. to develop proceedings of the workshop and adjourn at approximately 4 p.m. (Eastern Time).

ADDRESSES: The public workshop and meeting of the SAB EPEC will be held in the Washington, DC area at a location to be posted on the SAB Web site (*www.epa.gov/sab*).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to attend the workshop must pre-register via e-mail or fax to Ms. Vickie Richardson, EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 343–9978; Fax (202) 233–0643; or via e-mail at *richardson.vickie@epa.gov,* providing your name, title, organization, mailing address, phone, and e-mail. Members of the public wishing further information concerning the workshop and meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 343–9995, fax at (202) 233–0643, by e-mail at *armitage.thomas@epa.gov,* or by mail at U.S. EPA SAB (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB may be found on the SAB Web site, *http://www.epa.sab.*

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the SAB Ecological Processes and Effects Committee will hold a public workshop and meeting to evaluate the state-of-the-practice of ecological risk assessment. The dates and times for the workshop and meeting are provided above.

Background: The ongoing growth of ecological risk assessment has prompted the SAB EPEC to undertake a project to develop information on the current state-of-the-practice of ecological risk assessment. The goal of the project is to evaluate ecological risk assessment practices and to provide advice and recommendations to EPA regarding ways to enhance the conduct and application of ecological risk assessment in environmental decision making. To complete this project, the SAB EPEC plans to hold a public workshop in order to develop information on: (1) Application of ecological risk assessment in decision making and (2) technical themes and issues regarding ecological risk assessment. EPEC will use the workshop proceedings to develop advice and recommendations to EPA. The workshop, focusing on application of ecological risk assessment in decision making, will be held at the dates and times indicated above. The workshop will include: SAB members and EPA staff on the workshop steering committee, members of the SAB Ecological Processes and Effects Committee, and invited EPA and outside experts in the field of ecological risk assessment. The workshop will begin with a series of plenary presentations focusing on the application of ecological risk assessment: in product health and safety decision-making, management of contaminated sites, and natural resources protection. Following the plenary presentations, participants will be assigned to breakout groups to discuss key cross-cutting issues in the application of ecological risk assessment in decision making. The workshop will conclude with the attendees identifying opportunities to advance the state-of-the-practice of ecological risk assessment for application in decision making. SAB EPEC will meet following the workshop at the time and date identified above to develop workshop proceedings.

Availability of Meeting Materials: A draft workshop agenda is posted on the SAB Web site (*www.epa.gov/sab*). An updated agenda will be posted prior to the workshop.

Procedures for Providing Public Comments: The SAB Staff Office accepts written public comments, and will accommodate oral public comments at the workshop to the extent possible.

Written Comments: Written comments are preferred and should be submitted by e-mail to Dr. Thomas Armitage at *armitage.thomas@epa.gov* in Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format) by January 30, 2006. Those without access to e-mail may submit one signed hard copy of the comments to Dr. Armitage by mail or courier. Commenters planning to attend the workshop in person are asked to bring 100 copies of their comments for public distribution.

Oral Comments: Requests to provide oral comments must be in writing (e-mail or fax) and received by Dr. Armitage no later than January 30, 2006 to reserve time on the workshop agenda. Presentation time for oral comment will typically be about five minutes per speaker, but may be reduced depending on time availability and the number of requests.

Meeting Accommodations: Individuals requiring special accommodation to access the workshop and public meeting listed above should contact the DFO at least five business days prior to the workshop and meeting so that appropriate arrangements can be made.

Dated: September 1, 2005.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–17820 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011290–035.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties: Aliança Navegacao e Logistica Ltda.; APL Co. PTE Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Bermuda Container Line; Canada Maritime Agencies Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compania Latino Americana de Navegacion SA; Contship Containerlines; COSCO Container Lines, Inc.; CP Ships USA LLC; Crowley Maritime Corporation; Evergreen Marine Corp. (Taiwan) Ltd.; Hamburg-Südamerikanische Dampfschifffahrts-gesellschaft KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Horizon Lines, LLC; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Kawasaki Kisen Kaisha Ltd.; Marine Transport Lines, Inc.; Maruba SCA; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk A/S; National Shipping Co. of Saudi Arabia; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Safmarine Container Lines; Seaboard Marine Ltd.; Senator Lines GmbH; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Co. S.A.G.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esquire; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds COSCO Container Lines, Inc. as a party to the agreement.

By order of the Federal Maritime Commission.

Dated: September 2, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–17814 Filed 9–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Rucky International Company, 149 Isabelle Street, Metuchen, NJ 08840. Officer: Amarasena Anura Rupasinghe, President, (Qualifying Individual).

Fast Track Everlast Shipping & Delivery, 5406 Park Heights Avenue, Baltimore, MD 21215, Montgomery Davson, Sole Proprietor.

Miriam Family Cargo Inc., 18 NW. 12th Avenue, Miami, FL 33128. Officers: Miriam Bennett, President, (Qualifying Individual), Randy Bennett, Vice President.

International Specialists Worldwide Moving, Inc., 8227 Oak Street, Suite A, New Orleans, LA 70118. Officers: Joseph L. Williams, Vice President, (Qualifying Individual), Gaylen Harris, President.

K.C. Consulting, Inc., 36565 Nathan Hale Drive, Lake Villa, IL 60046. Officer: Kazimierz Chudecki, President, (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

DFYoung-Del Med, Inc., 1235 West Lakes Drive, Suite 255, Berwyn, PA 19312–2401. Officers: Aaron Wesley Wyatt, IV, Vice President, (Qualifying Individual), John Hardy, President.

Jam'n International Cargo Inc., 3414 South Garfield Avenue, Commerce, CA 90040. Officers: Jon Winston Liu, Vice Pres. Of Operations, (Qualifying Individual), John Watkins, President.

Customs & Logistics International, Inc. dba Customs & Logistics Ocean Lines, 85555 NW. 36th Street, Suite 115, Miami, FL 33166. Officer: Carlos A. Francisco, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Via Mat International (USA) Inc., 130 Sheridan Blvd., Inwood, NY 11096. Officers: Joachim (Joe) Nuebling, President, (Qualifying Individual), Victor Moser, Director.

Carlos Trucks & Parts dba Carmen's Cargo, 8235 Pillot Drive, Houston, TX 77029, Carmen E. Botero, Sole Proprietor.

Dated: September 2, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–17813 Filed 9–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. CNB Financial Corp., Worcester, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Commonwealth National Bank, Worcester, Massachusetts.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Highlands Bankshares, Inc., Petersburg, West Virginia; to acquire at least 80 percent of the voting shares of The National Bank of Davis, Davis, West Virginia.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200

North Pearl Street, Dallas, Texas 75201-2272:

1. FC Holdings, Inc., Houston, Texas, and FC Holdings of Delaware, Inc., Wilmington, Delaware; to merge with Bosque Corporation, and thereby indirectly Bosque County Bank of Meridian, both of Meridian, Texas.

2. Prosper Bancshares, Inc., Dallas, Texas, and Prosper Delaware Financial Corp., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Prosper State Bank Prosper, Texas.

3. South Texas Bancshares, Inc., Grand Prairie, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Caprock Bancshares, Inc., Shallowater, Texas, and thereby indirectly acquire First State Bank, Shallowater, Texas.

D. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Zions Bancorporation, Salt Lake City, Utah; to acquire 100 percent of the voting shares of Amegy Bancorporation, Inc., Houston, Texas, and thereby indirectly acquire voting shares of Amegy Bank, National Association, Houston, Texas.

Board of Governors of the Federal Reserve System, September 1, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–17741 Filed 9–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 05-17264) published on page 51816 of the issue for Wednesday, August 31, 2005.

Under the Federal Reserve Bank of Chcago, the entry for Marshall and Ilsley Corporation, Milwaukee, Wisconsin, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Marshall and Ilsley Corporation, Milwaukee, Wisconsin; to acquire Brasfield Holdings, LLC, Birmingham, Alabama, and thereby indirectly acquire ownership of Brasfield Technology LLC, Brasfield Data Services LLC, Image Center LLC and Image Exchange LLC, all located in Birmingham, Alabama, and thereby engage in data processing and management consulting activities, pursuant to sections 225.28(b)(9)(i)(A), and 225.28(b)(14)(i and ii) of Regulation Y.

Comments on this application must be received by September 15, 2005.

Board of Governors of the Federal Reserve System, September 1, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–17742 Filed 9–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Public Workshop: Competition Policy and the Real Estate Industry

AGENCIES: Federal Trade Commission (FTC) and Department of Justice (DOJ).

ACTION: Joint notice of workshop and opportunity for comment.

SUMMARY: The FTC and DOJ are planning to host a public workshop, ''Competition Policy and the Real Estate Industry.'' The workshop will focus on issues related to the competitiveness of the residential real estate industry, and will cover topics such as multiple listing services (''MLSs''), online ''virtual office Web sites'' (''VOWs''), discount brokers and limited-service brokers, and minimum-service requirements.

The event is open to the public and there is no fee for attendance. For admittance to the conference center, all attendees will be required to show a valid form of photo identification, such as a driver's license.

The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please e-mail your name and affiliation to the e-mail box for the workshop, at *CompetitionandRealEstate@ftc.gov*. When you pre-register, we collect your name, affiliation, and your e-mail address. This information will be used to estimate how many people will attend and better understand the likely audience for the workshop. We may use your email address to contact you with information about the workshop. Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose the information you provide us to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at *www.ftc.gov/ftc/privacy.htm*. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

Additional information about the workshop will be posted on the FTC and DOJ Web sites at *http://www.ftc.gov/opp/workshops/comprealestate/index.htm* and *www.usdoj.gov/atr/public/workshops/reworkshop.htm*.

DATES: The workshop will be held on Tuesday, October 25, 2005 at the FTC's Satellite Building Conference Center located at 601 New Jersey Avenue, NW., Washington, DC. Requests to participate must be received on or before September 25, 2005.

Requests to Participate as a Panelist: Persons filing requests to participate as a panelist will be notified on or before October 11, 2005, if they have been selected. For further instructions, please see the ''Requests to Participate as a Panelist at the Workshop'' section below.

Written and Electronic Comments: Any person may submit written or electronic comments on the topics to be discussed by the panelists. Such comments must be received on or before November 28, 2005. For further instructions on submitting comments, please see the **ADDRESSES** section below. To read our policy on how we handle the information you submit, please visit *www.ftc.gov/ftc/privacy.htm* or *www.usdoj.gov/privacy-file.htm*.

ADDRESSES: Comments should refer to ''Competition and Real Estate Workshop—Comment, Project No. V050015'' to facilitate the organization of comments and requests to participate. A comment filed in paper form should include this reference both in the text and on the envelope, and the original and two complete copies should be mailed or delivered to the following two addresses: Federal Trade Commission/Office of the Secretary, Room 135–H (Annex F), 600 Pennsylvania Avenue, NW, Washington, DC 20580; and Antitrust Division, U.S. Department of Justice, Liberty Place Suite 300, Attention: Lee Quinn, 325 7th Street NW, Washington, DC 20530.

Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comment in electronic form, as prescribed below. Comments and requests to participate containing any material for which confidential treatment is requested, must be filed in paper (rather than electronic) form, and the first page of the document must be

clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Comments filed in electronic form (except comments containing any confidential material) must be submitted to both the FTC and the DOJ. Parties can submit electronic comments to the FTC by clicking on the following Web link: *https://secure.commentworks.com/FTC-realestatecompetition* and following the instructions on the Web-based form. Parties also should email electronic comments to the DOJ at *RealEstateWorkshop@usdoj.gov*. DOJ requests that attachments to electronic comments include a comparable text version, such as Word or Word Perfect. You also may visit *http://www.regulations.gov* to read this request for public comment and may file an electronic comment through that Web site. The FTC and the DOJ will consider all comments that regulations.gov forwards to them.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the FTC and the DOJ, and, to the extent practicable, made available on both the FTC and DOJ Web sites (*http://www.ftc.gov* and *http://www.usdoj.gov/atr/index.html*, respectively). As a matter of discretion, the FTC and the DOJ make every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routing uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *www.ftc.gov/ftc/privacy.htm* and the DOJ Privacy Policy at *www.usdoj.gov/privacy-file.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to James Cooper, Federal Trade Commission, Office of Policy Planning, 600 Pennsylvania Avenue, NW., Washington, DC 20580 (Telephone: 202–326–3367), or Lee Quinn, Antitrust Division, U.S. Department of Justice, Liberty Place Suite 300, 325 7th Street NW., Washington, DC 20530 (Telephone: 202–307–1028).

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Additional information on the workshop will be posted at the following Web sites: *http://www.ftc.gov/opp/workshops/comprealestate/index.htm* and *www.usdoj.gov/atr/public/workshops/reworkshop.htm*.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

Background: In 2004, Americans spent over $60 billion on real estate brokerage services.[2] The vast majority of residential real estate sales involve real estate brokers, who help both home buyers and home sellers.

Traditionally, real estate professionals, such as brokers and their affiliated agents, have performed virtually all services relating to the sale of a home, including marketing a home, negotiating with potential buyers, and helping to coordinate the closing of the transaction. In most areas, brokers have established and run multiple listings services (MLSs) as joint ventures through which agents share information on homes for sale. Marketing includes listing the property in the local MLS, placing advertisements in local media and on the Internet, and conducting open houses. A seller's agent may also provide advice on pricing, home inspections, or other contractual terms. Buyers' agents help prospective home buyers find a suitable home from properties listed in the MLS and, like sellers' agents, typically assist in negotiating and helping to arrange closing the transaction. A seller's agent typically is compensated by a commission based on a percentage of the sales price of the home. He or she in turn compensates the buyer's agent, often but not always, by splitting the commission evenly between them.

Several related developments are presenting challenges to this traditional brokerage model. First, in response to perceived consumer demand, some real estate professionals are offering to provide only those services a home seller wants. In so-called ''fee-for-service'' or ''limited-service'' brokerage models, a home seller might, for example, choose to pay a broker only for the service of listing the home in the local MLS and placing advertisements, and choose to handle negotiations and paperwork himself or herself.

Second, real estate professionals are increasingly incorporating the Internet into their business models in a variety of ways. In general, these models use the Internet to allow someone else to perform a task traditionally done by the broker or agent. Some brokers, for example, offer potential buyers the option of viewing full, detailed listing information online, allowing them to delay contacting a real estate professional until they are ready to buy. When the transaction closes, these brokers may rebate a portion of their commission to the customer. Other firms use websites to gather ''lead'' information on customers who seek real estate services and sell those leads to real estate professionals, usually for a fee based on the commission that the professional earns in the transaction. Still other business models exist that use the Internet to match home buyers and sellers.

Actions by individual firms of real estate professionals, by groups of professionals acting through MLSs, by industry trade associations, and by state regulatory and legislative bodies have all spawned recent lawsuits or controversies. Some of the controversies concern how existing industry members and institutions have responded to real estate professionals that offer novel business models. There have been private lawsuits among brokerage firms alleging illegal anticompetitive activity by individual brokerages, and by groups of brokerages, in offering low commission ''splits'' to rival discount or minimum-service brokerages. The DOJ has acknowledged that it is investigating the potential competitive impact of certain rules involving the display of residential real estate data over the Internet.

Several states have considered or passed laws or regulations that would effectively curtail fee-for-service brokerage. Further, some states have either passed new laws or regulations, or interpreted existing laws or regulations, to prevent brokers from passing a proportion of their commissions along to consumers.

The FTC and the DOJ have been actively involved in analyzing potential restrictions on competition in the real estate brokerage industry. In July, the DOJ announced a settlement of a civil antitrust suit that it had filed earlier in the year against the Kentucky Real Estate Commission.[3] Under the settlement, which must be approved by the court, the Kentucky Real Estate Commission agrees to stop enforcing a regulation that prohibits Kentucky real estate brokers and sales associates from offering rebates and other inducements

[2] John R. Wilke & James R. Hagerty, *U.S. Plans Antitrust Suit Over Real Estate Listings*, Wall Street Journal A1 (May 9, 2005).

[3] See Proposed Amended Final Judgment, *United States* v. *Kentucky Real Estate Comm'n,* Civ. Act. No. 3:05CV188–H (filed July 15, 2005), at *www.usdoj.gov/atr/cases/f210100/210142.htm.*

to attract customers.[4] Recently, the FTC and the DOJ also have jointly advocated against the passage of regulations proposed by the Texas Real Estate Commission that would have effectively limited consumers' ability to purchase a more limited, less expensive, set of real estate services.[5] In May 2005, the FTC and the DOJ also sent a letter urging the Alabama Senate not to pass a bill that would also have restricted consumer choice in real estate service levels.[6] Likewise, the two agencies also jointly issued a letter to the Governor of Missouri informing him of the competitive effects of a bill that similarly would have restricted the ability of Missouri real estate professionals to offer customized real estate services.[7]

Because of the substantial changes in the real estate brokerage marketplace, and consumers' interest in a competitive real estate brokerage industry, the FTC and the DOJ will hold a workshop on Tuesday, October 25, 2005 in Washington, DC to provide a forum to discuss current issues affecting the competitiveness of real estate brokerage. In particular, discussion will center around the following topics:

1. *The Real Estate Transaction:* including the details of the real estate transaction from both the buyer's and seller's side; how broker efforts affect property sale price and how long a property remains on the market; and the economics of buyer and seller brokerage agreements and alternatives to the traditional arrangements.

2. *The Multiple Listing Service:* including how the MLS works and its efficiencies compared to alternative models; the legal and economic issues raised by the MLS; intellectual property rights in MLS listings; and MLS' online listing policies.

3. *Private and State Actions that Inhibit Competition among Sellers' Brokers:* including minimum-service requirements; state licensing and other requirements for for-sale-by-owner Web sites; local MLS rules that affect fee-for-service brokers and discount full-service brokers; and how any of the above restrictions may help protect consumers or otherwise provide benefits to consumers.

4. *Private and State Actions that Inhibit Competition among Buyers' Brokers:* including state anti-rebate provisions; state rules that define online display of listings as advertising; minimum-service requirements applied to buyers' brokers; discrimination in compensation against discount buyers' brokers; and how any of the above restrictions may help protect consumers or otherwise provide benefits to consumers.

Requests To Participate as a Panelist in the Workshop

Parties seeking to participate as panelists in the workshop must notify both the FTC and the DOJ in writing on or before September 25, 2005. Requests to participate as a panelist should be submitted electronically by e-mail to *RealEstatePanelistRequest@ftc.gov* and *RealEstateWorkshop@usdoj.gov* or, if mailed, should be submitted in the manner detailed in the **ADDRESSES** section, and should be captioned ''Competition Policy in the Real Estate Industry—Request to Participate, Project No. V050015.'' Parties are asked to include in their requests a statement setting forth their experience in or knowledge of the issues on which the workshop will focus and their contact information, including telephone number, facsimile number, and e-mail address (if available), to enable the FTC and the DOJ to provide parties with notice if selected. For requests filed in paper form, an original and two copies of each document should be submitted. Panelists will be notified on or before October 11, 2005 if they have been selected.

Using the following criteria, FTC and DOJ staff will select a limited number of panelists to participate in the workshop:

1. The party has expertise in or knowledge of the issues that are the focus of the workshop;

2. The party's participation would promote a balance of interests being represented at the workshop; or

3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s).

In addition, there will be time during the workshop for those not serving as panelists to ask questions.

Form and Availability of Comments

The FTC and the DOJ request that interested parties submit written comments on the above questions and other related issues to foster greater understanding of these topics. Especially useful are any studies, surveys, research, and empirical data. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before November 28, 2005.

By direction of the Commission.

Donald S. Clark,

Secretary, Federal Trade Commission.

[FR Doc. 05–17855 Filed 9–7–05; 8:45 am]

BILLING CODE 6750–01–P

[3] See Proposed Amended Final Judgment, *United States* v. *Kentucky Real Estate Comm'n,* Civ. Act. No. 3:05CV188–H (filed July 15, 2005), at *www.usdoj.gov/atr/cases/f210100/210142.htm.*

[4] See Complaint, *United States* v. *Kentucky Real Estate Comm'n,* Civ. Act. No. 3:05CV188–H (filed Mar. 31, 2005), at *http://www.usdoj.gov/atr/cases/f208300/208393.htm.*

[5] Letter from the FTC and the Justice Department to Loretta R. DeHay, Gen. Counsel, Texas Real Estate Comm'n. (Apr. 20, 2005), at *http://www.ftc.gov/os/2005/04/050420ftcdojtexasletter.pdf.*

[6] Letter from the FTC and the Justice Department to Alabama Senate (May 12, 2005), at *http://www.ftc.gov/os/2005/05/050512ltralabamarealtors.pdf.*

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—8/08/2005			
20051354	CHS Inc	Dean Foods Company	Dean Intellectual Property Services, L.P. Dean Intellectual Property Services II, L.P. Morningstar Services, Inc. Morningstar Foods, LLC. White Wave Food Company.
20051355	Mitsui & Co., Ltd	Dean Foods Company	Dean Intellectual Property Services II, L.P. Dean Intellectual Property Services, L.P. Morningstar Foods, LLC. Morningstar Services, Inc. White Wave Foods Company.
TRANSACTIONS GRANTED EARLY TERMINATION—8/09/2005			
20051279	Omnicare, Inc	James S. Karp	Making Distribution Intelligent, L.L.C. RxCrossroads, L.L.C. Rxinnovations, L.L.C.
20051312	Microsoft Corporation	FrontBridge Technologies, Inc	FrontBridge Technologies, Inc.
20051351	XM Satellite Radio Holdings Inc	WCS Wireless, Inc	WCS Wireless, Inc.
20051363	Green Field II, LLC	Health Resource Partners, LLC	NAMM Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—8/11/2005			
20051290	Duke Energy Construction	Cinergy Corp	Cinergy Corp.
20051291	Cinergy Corp	Duke Energy Corporation	Duke Energy Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—8/12/2005			
20051365	CCG Investments BVI, L.P	Aspect Communications Corporations	Aspect Communications Corporations.
20051366	FPL Group, Inc	Alliant Energy Corporation	Duane Arnold Energy Center. Interstate Power and Light Company. Iowa Land and Building Company.
20051376	Mohawk Industries, Inc	Cigales SAK	Unilin Holding NV.
20051377	Thomson S.A	PRN Corporation	PRN Corporation
20051379	Blackstone Capital Partners (Cayman) IV L.P.	Kjeld Kirk Kristiansen	LEGOLAND California LLC. LEGOLAND Estates AG.
20051382	Spohn Cement GmbH	Heidelberg Cement AG	HeidelbergCement AG.
20051383	Chesapeake Corporation	Aurora Equity Partners L.P	Impaxx Pharmaceutical Packaging, Inc.
20051386	Gannett Co., Inc	Knight-Ridder, Inc	Knight Ridder Digital. KR USA, Inc. Tallahassee Democrat, Inc.
20051387	Knight-Ridder, Inc	Gannett Co., Inc	Des Moines Register and Tribune Company. Federated Publications, Inc. Gannett Satellite Information Network, Inc. Media West-FPI, Inc.
20051389	International Business Machines Corporation.	DWL (USA) Inc	DWL (USA) Inc.
20051390	American Pacific Corporation	GenCorp Inc	Aerojet Fine Chemicals LLC. Aerojet-General Corporation.
20051391	MHR Institutional Partners IIA LP	Loral Space & Communications Ltd	Loral Space & Communications Inc.
20051392	MHR Institutional Partners LP	Loral Space & Communications Ltd	Laral Space & Communications Inc.
20051393	Aberdeen Asset Management PLC	Deutsche Bank AG	Deutsche Bank AG. Deutsche Investment Management. Scudder Trust Company.
20051397	President and Fellows of Harvard College.	VarTec Telecom, Inc. (Debtor-in-possession).	Excelcom, Inc. Excel Communications Marketing, Inc. Excel Management Service, Inc. Excel Products, Inc. Excel Telecommunications, Inc. Excel Telecommunications of Virginia, Inc. Excel Teleservices, Inc. Telco Communications Group, Inc. Telco Network Services, Inc. VarTec Business Trust.

Trans #	Acquiring	Acquired	Entities
			VarTec Properties, Inc. VarTec Resource Services, Inc. VarTec Solutions, Inc. VarTec Telecom Holding Company. VarTel Telecom International Holding Company. VarTec Telecom of Virginia, Inc.
20051399	GUS plc	Mark and Karen Hill, husband and wife	Baker Hill Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—8/15/2005			
20051317	Legg Mason, Inc	Citigroup Inc	Citibank Global Asset Management (Asia) Limited (Hong Kong). Citicorp Chile Administradora General de Fondos S.A. (Chile). Citi FCP S.A. (Luxembourg). Citigroup Advisors Co., Ltd. (Japan). Citigroup Asset Management Limited (United Kingdom). Citigroup Investment Management (Luxembourg) S.A. Citi Islamic Portfolios S.A. (Luxembourg). CitiMoney S.A. (Luxembourg). Handlowy Zarzadzanie Aktywami S.A. (Poland). Solomon Brotherds Asset Management Asia Pacific Limited. Salomon Brothers Asset Management Inc. (Delaware, USA). Salomon Brothers Asset Management (Ireland). Smith Barney Fund Management LLC (Delaware, USA). Smith Barney Global Capital Management, Inc. The Travelers Investment Management Company. Towarzstwo Funduszy Inwestycyjnych BH S.A. (Poland).
20051318	Citigroup Inc	Legg Mason, Inc	Howard Weil Financial Corporation (Louisiana). Legg Mason, Inc. Legg Mason Insurance Agency, Inc. (Maryland). Legg Mason Insurance Agency of Massachusetts, Inc. Legg Mason Insurance Agency of Texas, Inc. (Texas). Legg Mason Limited UK Corporation (United Kingdom). Legg Mason Mortgage Capital Corporation (Maryland). Legg Mason Wood Walker, Inc. (Maryland). LM Falcon Investment Strategies, Inc. (Maryland). Orchard Financial Services, Inc. (Maryland). Peregrine Investment LLC (Maryland).
20051388	Evergreen Pacific Partners, L.P	Clear Channel Communications, Inc	Citicasters Co.
20051401	Brockway Moran & Partners Fund II, LP	Long Point Capital/Fund, L.P	Colibri Holding Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—8/16/2005			
20051327	Novartis AG	Bristol Myers Squibb Company	Bristol Myers Squibb Company.
20051374	Schneider Electric SA	BEI Technologies, Inc	BEI Technologies, Inc.
20051378	American Capital Strategies, Ltd	Halifax Capital Partners L.P	Soil Safe Holding, Inc.
20051396	Oracle Corporation	i-flex Solutions Limited	i-flex Solutions Limited.
TRANSACTIONS GRANTED EARLY TERMINATION—8/17/2005			
20051347	CIT Group Inc	Itochu Corporation	Healthcare Business Credit Corporation.
20051369	El Paso Corporation	Chevron Corporation	Four Star Oil & Gas Company.

Trans #	Acquiring	Acquired	Entities
20051398	Apollo Investment Fund V, L.P	Cendant Corporation	Cendant International Holding Ltd. Cendant Marketing Group, LLC.
20051408	Hughes Supply, Inc	TVESCO, Inc	TVESCO, Inc.
20051412	Ares Corporation Opportunities Fund, L.P.	National Bedding Holdings, Inc	National Bedding Company, L.L.C. Star LP.
TRANSACTIONS GRANTED EARLY TERMINATION—8/19/2005			
20051352	DPS Credit Union	Safeway Rocky Mountain Federal Credit Union.	Safeway Rocky Mountain Federal Credit Union.
20051409	Cobb Electric Membership Corporation	The Southern Company	Southern Company Gas, LLC.
20051411	American Capital Strategies, Ltd	Carol F. and Ralph A. Venuto, Sr	Hollywood Tanning Systems, Inc.
20051414	PolyMedia Corporation	Robert M. Haft	National Diabetic Pharmacies, Inc.
20051415	General Electric Company	Babcock & Brown Limited	Kumeyaay Wind LLC.
20051416	Berkshire Hathaway Inc	Peter J. Liegl	Forest River Housing, Inc. Forest River, Inc. Forest River Warranty Company. FR Texas Group, LP. Linnae Corporation. Mapletree Transportation, Inc. Vanguard, LLC.
20051420	Yucaipa American Alliance Fund I, LP	Pathmark Stores, Inc	Pathmark Stores, Inc.
20051427	GS Holdings Co	Carlyle Partners III, L.P	Panolam Industries Holdings, Inc.
20051430	QinetiQ Holdings Limited	Arlington Capital Partners	Apogen Technologies, Inc.
20051431	Hellman & Friedman Capital Partners IV, L.P.	National Association of Securities Dealers, Inc.	National Association of Securities Dealers, Inc.
20051436	Atlantic Equity Partners III, L.P	Precision Parts International, LLC	MPI International Holdings, Inc. Precision Gear Holdings, Inc. Precision Parts International Services Corp. Skill Tool & Die Holdings Corp.
20051438	News Corporation	Intermix Media, Inc	Intermix Media, Inc.
20051443	Carlyle Partners IV, L.P	SS&C Technologies, Inc	SS&C Technologies, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—8/22/2005			
20051450	Silver Lake Partners II TSA, L.P	National Association of Securities Dealers, Inc.	National Association of Securities Dealers, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—8/23/2005			
20050993	Cal Dive International, Inc	Torch Offshore Inc	Torch Offshore Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—8/24/2005			
20051402	Bunzl plc	Royal Ahold	U.S. Foodservice, Inc.
20051428	Veolia Environment S.A	National Express Group, PLC	ATC/Vancom, Inc.
20051434	MCI, Inc	Totality Corporation	Totality Corporation.
TRANSACTIONS GRANTED EARLY TERMINATIONS—8/25/2005			
20051395	Parker Hannifin Corporation	domnick hunter group plc	domnick hunter group plc.
20051400	Engelhard Corporation	Rhone Capital LLC	Almatis AC, Inc.
20051429	SunCom Wireless Holdings, Inc., f/k/a Triton PCS Holdings.	Urban Communicators PCS Ltd Partnership, Debtor-in-Possession.	Urban Comm-North Carolina, Inc., Debtor-in-Possession.
20051437	UniCredito Italiano SpA	Bayerische Hypo-und Vereinsbank AG	Bayerische Hypo-und Vereinsbank AG.
TRANSACTIONS GRANTED EARLY TERMINATION—8/26/2005			
20051380	TA IX L.P	Henry L. Hillman	SCCI Health Services Corporation.
20051405	Bandai Co., Ltd	Namco Limited	Namco Limited.
20051439	General Dynamics Corporation	CCG Investment Fund, L.P	New Itronix Holdings Corporation.
20051458	The Procter & Gamble Company	The Gillette Company	The Gillette Company.
20051462	SkyWest, Inc	Delta Air Lines, Inc	Atlantic Southeast Airlines, Inc.
20051469	Welsh, Carson, Anderson & Stowe IX, L.P.	Mr. and Mrs. John H. and Jean Kung Jessen.	Electronic Evidence Discovery, Incorporated.
20051481	Brockway Moran & Partners Fund II, L.P.	Morgenthaler Partners VI, L.P	GED Holdings, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant. Federal Trade Commission, Premerger Notification Office, Bureau of

Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–17753 Filed 9–7–05; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–05CU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of HIV Care Providers—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a 3-year approval from the Office of Management and Budget (OMB) to survey randomly selected HIV care providers (*e.g.*, physicians and other care providers) in the United States regarding their training history, areas of specialization, ongoing sources of training and continuing education about HIV care, and awareness of HIV treatment guidelines and resources. Results from this survey will be used in conjunction with data from CDC's Morbidity Monitoring Project (MMP) to assess who is providing HIV care, to examine the impact of provider characteristics on the quality and standard of care being provided to patients with HIV, to determine opportunities to improve resources available to HIV care providers, and to evaluate the reasons for sampled providers' participation and non-participation in MMP. Participation in the survey is not contingent upon a provider's involvement with the MMP. All selected HIV care providers will be asked to participate in the survey, regardless of their participation in the MMP.

For this proposed data collection, MMP project areas have identified all HIV care providers in their jurisdictions, including those providers who may not be participating in the MMP project. Of this universe of HIV care providers, CDC plans to randomly survey 1,040 providers. Respondents will have the option to use either a Web-based application or paper survey to participate in the survey. There is no cost to respondents to participate in this survey other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOUR TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
HIV Care Providers	1040	1	45/60	780

Dated: August 30, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17763 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–0659]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Surveillance for Ciguatera Fish Poisoning in Recreational Fishers Utilizing Texas Gulf Coast Oil Rigs (0920–0659)—Extension—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This public health surveillance activity will quantify the scope of ciguatera poisonings in the recreational fishing community of coastal Texas. The

Texas Department of Health has received reports of ciguatoxic fish caught on Texas offshore oil rigs, and anecdotal reports to researchers at the University of Texas suggest that the incidence of ciguatera fish poisoning is greater than what has been reported to the Texas Department of Health. We propose to continue to conduct surveillance activities to identify the prevalence of ciguatera fish poisoning in Texas Gulf Coast oil rigs. This study will provide critical data in guiding efforts to characterize the scope of ciguatera poisonings, to identify risk factors, and to prevent an emerging illness associated with reef ecosystems. A questionnaire will be administered over a three-year period to Texas saltwater fishermen (recreational spearfishers and to hook-and-line anglers) who have consumed fish caught on the reef ecosystems off the Texas Gulf coast. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Texas Saltwater Fishermen	500	1	20/60	167

Dated: August 30, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17764 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–0576]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Possession, Use, and Transfer of Select Agents and Toxins (OMB Control No. 0920–0576)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) specifies that the Secretary of Health and Human Services (HHS) shall provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of select agents and toxins. The Act specifies that facilities that possess, use, and transfer select agents register with the Secretary. The Secretary has designated CDC as the agency responsible for collecting this information.

CDC is requesting continued OMB approval to collect this information through the use of five separate forms. These forms are: (1) Application for Registration; (2) Request to Transfer Select Agent or Toxin; (3) Report of Theft, Loss, or Release of Select Agent and Toxin; (4) Report of Identification of Select Agent or Toxin; and (5) Request for Exemption.

The Application for Registration (42 CFR 73.7(d)) will be used by entities to register with CDC. The Application for Registration requests facility information; a list of select agents or toxins in use, possession, or for transfer by the entity; characterization of the select agent or toxin; and laboratory information. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent or toxin. CDC estimates that entities will need an additional 45 minutes for each additional investigator or agent. In our regulatory analysis, we have estimated that 70% of the 350 entities have 1–3 principal investigators, 15% have 5 principal investigators, and 15% have 10 principal investigators. We have used these figures to calculate the burden for this section. Estimated burden for the Application for Registration is 2,191 hours.

Entities may amend their registration (42 CFR 73.7(h)(1)) if any changes occur in the information submitted to CDC. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 1 hour.

The Request to Transfer Select Agent or Toxin form (42 CFR 73.16) will be used by entities requesting transfer of a select agent or toxin to their facility, and by the entity receiving the agent. CDC revised the Request to Transfer Select Agent or Toxin form by removing the requirement that entities provide written notice within five business days when select agents or toxins are consumed or destroyed after a transfer. Estimated average time to complete this form is 1 hour, 30 minutes.

The Report of Theft, Loss, or Release of Select Agent and Toxin form (42 CFR 73.19(a)(b)) must be completed by entities whenever there is theft, loss, or release of a select agent or toxin. Estimated average time to complete this form is 1 hour.

The Report of Identification of Select Agent or Toxin form 42 CFR 73.5(a)(b) and 73.6(a)(b)) will be used by clinical and diagnostic laboratories to notify CDC that select agents or toxins identified as the result of diagnostic or proficiency testing have been disposed

of in a proper manner. In addition, the form will be used by Federal law enforcement agencies to report the seizure and final disposition of select agents and toxins. Estimated average time to complete this form is 1 hour.

The Request for Exemption form (42 CFR 73.5(d)(e) and 73.6(d)(e)) will be used by entities that are using an investigational product that are, bear, or contain select agents or toxins or in cases of public health emergency. Estimated average time to complete this form is 1 hour.

In addition to the standardized forms, this regulation also outlines situations in which an entity must notify or may make a request of the HHS Secretary in writing. An entity may apply to the HHS Secretary for an expedited review of an individual by the Attorney General (42 CFR 73.10(e)). To apply for this expedited review, an entity must submit a request in writing to the HHS Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. CDC has not developed standardized forms to use in the above situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

An entity may also apply to the HHS Secretary for an exclusion of an attenuated strain of a select agent or toxin that does not pose a severe threat to public health and safety (42 CFR 73.3(e)(1) and 73.4(e)(1)). The estimated time to gather the information and submit this request is 1 hour.

As part of the duties of the Responsible Official, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents or toxins are stored. Results of these self-inspections must be documented (42 CFR 73.9(a)(5)). CDC estimates, that, on average, such documentation will take 1 hour.

As part of the training requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training (42 CFR 73.15(c)). Estimated time for this documentation is 2 hours per principal investigator.

An individual or entity may request administrative review of a decision denying or revoking certification of registration or an individual may appeal a denial of access approval (42 CFR 73.20). This request must be made in writing and within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is 4 hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified (42 CFR 73.17(b)). The time to implement such a system is estimated to average 4 hours.

The cost to respondents is their time to complete the forms and comply with the reporting and recordkeeping components of the Act plus a one-time purchase of a file cabinet (estimated cost $400) to maintain records.

ESTIMATE OF ANNUALIZED BURDEN HOURS

CFR reference	Data collection	Number of respondents	Responses per respondent	Average hourly burden	Total annual burden (in hours)
73.7(d)	Registration Application	350	1	3.75	1,313
73.7(d)	Additional Investigators	245	2	45/60	368
73.7(d)	Additional Investigators	53	4	45/60	159
73.7(d)	Additional Investigators	52	9	45/60	351
73.7(h)(1)	Amendment to Registration Application.	350	2	1	700
73.19(a)(b)	Notification of Theft, Loss, or Release form.	12	1	1	12
73.5 & 73.6 (d–e)/73.3 & 73.4(e)(1)	Request for Exemption/Exclusion.	17	1	1	17
73.16	Request to Transfer Select Agent or Toxin.	350	2	1.50	1,050
73.5 & 73.6(a)(b)	Report of Identification of Select Agent or Toxin form.	325	4	1	1,300
73.10(e)	Request expedited review	10	1	0.5	5
73.9(a)(5)	Documentation of self-inspection.	350	1	1	350
73.15(c)	Documentation of training	350	1	2	700
73.20	Administrative Review	15	1	4	60
73.17(b)	Ensure secure record-keeping system.	350	1	4	1,400
	Total				7,785

Dated: August 30, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17765 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–05CV]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of 911 Emergency Treatment for Heart Disease and Stroke —New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this project is to enhance CDC's understanding of emergency medical services (EMS) administration and oversight, identify important stakeholders for partnering and cooperation, and gather data on heart disease and stroke emergency treatment protocols in use. This project will fill an important gap in CDC's understanding of heart disease and stroke emergency medical care by providing detailed information from a sample of EMS organizations on operational resources, configurations of certification levels, treatment protocols and performance measures, and other significant issues at a local and state level in 9 states (FL, MA, KS, MT, NM, PA, OR, SC, AR), in order to ultimately contribute to the development and implementation of best practices for emergency treatment of heart disease and stroke.

The objectives of the data collection are to prepare a comprehensive description of the ''state of the practice'' of pre-hospital emergency medical services related to cardiac and stroke care. This will include organizational and administrative aspects of EMS at state, sub-state district, and local levels, major public and private stakeholders in the conduct of EMS, technical support issues, and practices related to positive outcomes in pre-hospital cardiac and stroke emergency care. Data analysis will include a compilation of the practices in use and comparison of organizational and administrative configurations.

Data collection includes: (1) A telephone survey with a random sample of 250 local EMS agency supervisors (total N=2,250) in each of 9 States on the status of capabilities represented and treatment protocols used in EMS organizations related to cardiac and stroke care; (2) in-person interviews with state level EMS officials (*e.g.*, State EMS Director, State EMS Medical Director, or public health agency representative) (N=18) who are involved in policy and practice of the EMS system in the state and, (3) telephone interviews with a purposive sample five sub-state level EMS officials (*e.g.*, county or district directors) (N=45) in each of the 9 states to examine responsibilities and objectives at a sub-state level for the state's EMS system.

There are no costs to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
Survey of Local Level EMS agencies in nine states	2,250	1	15/60	563
Survey of State Level EMS Directors/State Medical Directors in 9 states	18	1	1	18
Survey of Sub-state (district/county) EMS officials in 9 states	45	1	45/60	34
Total				615

Dated: August 30, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17766 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0440X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Integrating HIV and Other Prevention Services into Reproductive Health and Other Community Settings On-Line Performance Reporting System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Integrating HIV and Other Prevention Services into Reproductive Health and Other Community Settings is a training project of the CDC, National Center for Chronic Disease Prevention and Health Promotion, and its grantees, their ten family planning regional training centers. The project requires twice yearly reports from its grantees (each of whom corresponds to one of the ten federal public health regions), on their training-centered intervention activities. CDC guidelines also obligate grantees, under cooperative agreements to provide such performance reporting. To facilitate grantees' compliance with performance reporting requirements, a secure online performance reporting system has been designed to capture training activity information, an indicator of consistent and measurable project progress. Each grantee enters and edits their own training activity data and generates project evaluation documents and semi-annual reports on the Internet. CDC will use the reported data to assess project progress towards achieving its objectives:

1. Measurable information about grantees' prevention training activities.
2. Evaluate prevention training needs, complexity, diversity, and availability.
3. Comparisons between the trained population and the general population of the local area.
4. Evaluate special cultural and regional needs.
5. Describe the complexity of the trained workforce.
6. Grant grantees access to on-line data reports.

Grantees' semi-annual performance reports are due April 30 and October 30 during each year of the 5-year cooperative agreement. Using the on-line system, grantees enter data during each reporting period, then, generate a copy of their training report. Next, by the specified dates, grantees deliver this performance report and their non-structured narrative report, which explains additions, deletions, changes, and redirections of training objectives or activities, to CDC's Procurement and Grants Office.

Grantees' on-line performance reports incorporate the following:

A. Log-in information.
- Cooperative agreement number.
- Grantee organization name.
- Fiscal year.

B. Information describing grantees and their partners.
- Grantee contact information.
  - Contact names for principal staff.
  - Phone numbers and email addresses.
  - Project roles and responsibilities.
  - Web site URL.
- Project partner information.
  - Relationship to grantee.
  - Organization of facility.
  - Mailing address.
  - Street location.
  - Partner contact name, phone number and email address.
  - Project role and responsibility.
- Application goals and objective information.
  - Statement of goals.
  - Statement of objectives.
  - Progress toward completion.
  - Barriers encountered.
  - Changes or modifications.
  - Lessons learned.
  - Project role and responsibility.
  - Due dates and delivery dates for semi-annual reports.
  - Where reports are electronically stored at CDC.

C. Activity information (for each activity).
  - Date of activity.
  - Type of activity.
  - Activity title or name.
  - Part of project activity relates to.
  - Project objective activity relates to.
  - Percent of activity funded by cooperative agreement.
  - Was partner involved in activity?
  - Name of partner.
  - Linked to technical assistance?
  - Which specific technical assistance?

D. Information describing traditional classroom training events (from each event).
- Training description.
  - Type of training.
  - Skill level of the training.
  - Is this the first offering of this training?
  - Total training hours.
  - Did training last multiple days?
  - Did training include skills practice activities?
  - Were continuing education credits offered?
  - Delivered in language other than English?
  - Location of training.
  - Were participants given learning objectives?
  - Was a pre-training knowledge test used?
  - Mean score on pre-training knowledge test.
  - Was a post-training knowledge test used?
  - Mean score on post-training knowledge test.
  - Was there a follow-up survey of this training?
  - Number of participants followed.
  - Number using new skills.
  - Follow-up time in weeks.
  - Participants.
  - Number of pre-registered participants.
  - Number of participants completing training.
  - From each participant, basic demographics '' age, ethnicity, primary racial identity, gender, staff title, staff position, language fluencies.
  - From each participant, employer characteristics—location, type of organization, title-X funded?, employer provides protocol related to this training?

E. Information describing distance learning events (from each event).
- Type.
- Location.
- Duration in hours.
- First-time offered?
- Offered in language other than English?
- Continuing medical education credits offered?
- Number of downlink sites, Web hits, media copies, etc.

○ Number of downlink site locations (for satellite broadcasts, Web conferences, etc).

○ Number of participants at site.

F. Information from Technical Assistance activities (for each activity).

- Type of technical assistance.
- Location.
- Was needs assessment done?
- Was an evaluation plan done?
- Was a logic model used?
- Number of items on evaluation checklist.
- Initial evaluation checklist score.
- Final evaluation checklist score.

G. Information describing meetings (for each meeting).

- Purpose.
- Total number of training staff present.
- Number of other regional partners present.
- Total attending.
- Number of organizations represented.

H. Information describing development (for each event).

- Type.
- Was all or some (portion) contracted out?
- Language developed in.
- Materials appropriate for low-literacy populations?

The information obtained from the on-line performance reporting system will help the CDC meet its evaluation objectives as described above. No proprietary items or sensitive information will be collected. There is no cost to respondents.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden [1] per response (in hours)	Total burden (in hours)
Region 1 Grantee	1	2	1.28	2.57
Region 2 Grantee	1	2	1.28	2.57
Region 3 Grantee	1	2	1.28	2.57
Region 4 Grantee	1	2	1.28	2.57
Region 5 Grantee	1	2	1.28	2.57
Region 6 Grantee	1	2	1.28	2.57
Region 7 Grantee	1	2	1.28	2.57
Region 8 Grantee	1	2	1.28	2.57
Region 9 Grantee	1	2	1.28	2.57
Region 10 Grantee	1	2	1.28	2.57

[1] Estimate based on reporting of 20 events per grantee per semi-annual report, with each event requiring 3.85 minutes data-entry time.

Dated: August 30, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17767 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0445]

Proposed Data Collections Submitted for Public Comment and Recommendations

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Proposed Project

School Health Policies and Programs 2006, OMB No. 0920–0445—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC intends to continue to conduct the School Health Policies and Programs Study (SHPPS) in 2006. SHPPS is a national study of school health policies and programs at the state, district, school, and course levels. Much of the information collected will expand upon data gathered from the SHPPS 1994 (OMB No. 0920–0340, expiration date 1/31/95) and 2000 (OMB No. 0920–0445, expiration date 10/31/2002).

Modifications were made to the SHPPS 2000 survey to improve the clarity of items. New items were developed to capture information on topics of emerging importance. Specifically, three new topics were added to the School Policy and Environment questionnaires: Physical school environment; crisis preparedness, response, and recovery; and school climate.

SHPPS 2006 will assess the characteristics of eight components of school health programs at the elementary, middle/junior, and senior high school levels: Health education, physical education, health services, mental health and social services, food service, school policy and environment, faculty and staff health promotion, and family and community involvement. SHPPS 2006 data will be used to provide measures for 16 Healthy People 2010 national health objectives. No other national source of data exists for these objectives. The data also will have significant implications for policy and program development for school health programs nationwide.

There are no direct costs to the respondents except for their time to participate in the survey. The total estimated annualized burden hours are 22,840.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Questionnaire/activity	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Screening				
State Officials	Recruitment Scripts	51	1	40/60
District Officials (participants)	Recruitment Scripts	652	1	40/60
District Officials (non-participants)	Recruitment Scripts	116	1	1/60
School Officials (participants)	Recruitment Scripts	1,120	1	30/60
School Officials (non-participants)	Recruitment Scripts	280	1	1/60
Assistance Activities				
State Officials	Assist with identifying state level respondents and with recruiting districts and schools.	51		20/60
District Officials	Assist with identifying district level respondents and with recruiting schools.	652		20/60
Principals, secretaries, or designees	Assist with identifying and scheduling school level respondents.	1,120		30/60
Surveys				
State Officials	State Health Education	51	1	50/60
State Officials	State Physical Education	51	1	1
State Officials	State Health Services	51	1	1
State Officials	State Food Service	51	1	30/60
State Officials	State Questionnaire on School Policy and Environment.	51	1	45/60
State Officials	State Mental Health and Social Services	51	1	25/60
State Officials	State Faculty and Staff Health Promotion	51	1	20/60
District Officials	District Health Education	652	1	50/60
District Officials	District Physical Education	652	1	1
District Officials	District Health Services	652	1	1.2
District Officials	District Food Service	652	1	1
District Officials	District Questionnaire on School Policy and Environment.	652	1	1.5
District Officials	District Mental Health and Social Services	652	1	35/60
District Officials	District Faculty and Staff Health Promotion	652	1	25/60
Health education lead teachers, principals, or designees.	School Health Education	1,120	1	50/60
Physical education lead teachers, principals, or designees.	School Physical Education	1,120	1	1.9
School nurses, principals, or designees.	School Health Services	1,120	1	1.4
Food service managers, principals, or designees.	School Food Service	1,120	1	1.2
Principals or designee	School Policy and Environment	1,120	1	2.5
Counselors, principals, or designees	School Mental Health and Social Services	1,120	1	50/60
Principals or designees	School Faculty and Staff Health Promotion	1,120	1	30/60
Health education teachers	Classroom Questionnaire on Health Education	2,480	1	1.7
Physical education teachers	Classroom Questionnaire on Physical Education	2,022	1	1

Dated: August 29, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17768 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0555]

Proposed Data Collections Submitted for Public Comment and Recommendations

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Proposed Project

National Public Health Performance Standards Program Local Public Health System Assessment (OMB 0920–0555)—Revision—Office of the Director, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Office of the Director, CDC is proposing to extend the currently approved National Public Health Performance Standards Program Local Public Health System Assessment. From 1998–2002, the CDC National Public Health Performance Standards Program convened workgroups with the National Association of County and City Health Officials (NACCHO), The Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health.

CDC is now proposing to extend the formal, voluntary data collection that assesses the capacity of local public health systems to deliver the essential services of public health. Local health departments will respond to the survey on behalf of the collective body of representatives from the local public health system. Electronic data submission will be used when local public health agencies complete the public health assessment.

The extension will provide additional time for local public health systems to undertake the assessment. Some states have sought to include mention of the assessment in legislation or regulations and are now encouraging their localities to respond to the assessment in the upcoming two years. The focus on bioterrorism and other emerging issues diverted resources and attention from immediate use of the assessment since its national release in 2002. An additional three years of clearance will provide the time necessary to complete the project.

There are no costs to the respondents other than their time. The estimated annualized burden for each extension year is 4,200 hours.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Number of respondents	Number of responses per respondent	Average burden per response (in hours)
175	1	24

Dated: August 29, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17769 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0557]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Public Health Performance Standards Program State Public Health System Assessment (OMB 0920–0557)—Revision—Office of the Director, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Office of the Director, CDC is proposing to extend the currently approved National Public Health Performance Standards Program State Public Health System Assessment. From 1998–2002, the CDC National Public Health Performance Standards Program convened workgroups with the National Association of County and City Health Officials (NACCHO), The Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health.

CDC is now proposing to extend the formal, voluntary data collection that assesses the capacity of state public health systems to deliver the essential services of public health. Electronic data submission will be used when state health departments complete the public health assessment.

The extension will provide additional time for state public health agencies to undertake the assessment. Some states have sought to include mention of the assessment in legislation or regulations and are planning to respond to the assessment in the upcoming year. The focus on bioterrorism and other emerging issues diverted resources and attention from immediate use of the assessment since its national release in 2002. An additional three years of clearance will provide the time necessary to complete the survey.

The estimated annualized burden for each extension year is 105 hours.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Number of respondents	Number of responses per respondent	Average burden per response (in hours)
7	1	15

Dated: August 29, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–17770 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Mind/Body Research and Chronic Disease Conditions, Request for Applications Number DP–05–133

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Mind/Body Research and Chronic Disease Conditions, Request for Applications Number DP–05–133.

Time and Date: 1:30 p.m.–3 p.m., September 28, 2005 (Closed).

Place: Teleconference.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Mind/Body Research and Chronic Disease Conditions, Request for Applications Number DP–05–133.

Contact Person for More Information: J. Felix Rogers, PhD, Scientific Review Administrator, National Center for Chronic Disease Prevention and Health Promotion,

4770 Buford Highway, MS–K92, Atlanta, GA 30341, Telephone (404) 639–6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 1, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–17894 Filed 9–7–05; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Adolescent Follow-up to the National Survey of Child and Adolescent Well-Being.

OMB No.: 0970–0202.

Description: The Department of Health and Human Services intends to collect data on a subset of children and families who have participated in the National Survey of Child and Adolescent Well-Being (NSCAW). The NSCAW was authorized under Section 427 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The survey began in November 1999 with a national sample of 5,501 children ages 0–14 who had been the subject of investigation by Child Protective Services (CPS) during the base line data collection period, which extended from November 1999 through April 2000. Direct assessments and interviews were conducted with the children themselves, their primary caregivers, their caseworkers, and, for school-aged children, their teachers.

Follow-up data collections were conducted 12 months, 18 months, and 36 months post-baseline. The current data collection plan involves a subset of 950 children from the original sample who were ages 12 and older at baselines, and who will be ages 18 and older at follow-up. This group will be in early adulthood, and this follow-up will allow for assessing the functioning and service utilization for this age group as they enter independent living situations. The youths will be interviewed with questions covering social, emotional and behavioral adjustment, living arrangements, employment, service needs, and service utilization.

The NSCAW is unique in that it is the only source of nationally representative, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. Information is collected about children's cognitive, social, emotional, behavioral, and adaptive functioning, as well as family and community factors that are likely to influence their functioning. Family service needs and service utilization also are addressed in the data collection.

The data collection for the follow-up will follow the same format as that used in previous rounds of data collection, and will employ the same instruments that were used for adolescents who had moved into independent living status in previous rounds. Data from NSCAW are made available to the research community through licensing arrangements from the National Data Archive on Child Abuse and neglect, housed at Cornell University.

Respondents: 950 youths ages 18 and older.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Interview	950	1	1.5	1,425

Estimated Total Annual Burden Hours: 1,425.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 1, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–17750 Filed 9–7–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Notice of Intent To Prepare a Supplemental Environmental Impact Statement on the Sport Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is issuing this notice to advise the public that we are initiating efforts to prepare a Supplemental Environmental Impact Statement (EIS) for the Sport Hunting of Migratory Birds under the authority of the Migratory Bird Treaty Act. The EIS will consider a range of management alternatives for addressing sport hunting of migratory birds under the authority of the Migratory Bird Treaty Act. The Service seeks suggestions and comments on the scope and substance of this

supplemental EIS, options or alternatives to be considered, and important management issues. Federal and State agencies and the public are invited to present their views on the subject to the Service. While we have yet to determine potential sites of public scoping meetings, we will publish a notice of any such public meetings with the locations, dates, and times in the **Federal Register**.

DATES: You must submit written comments regarding EIS scoping by January 6, 2006, to the address below.

ADDRESSES: You should send written comments to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. Alternately, you may fax comments to (703) 358–2217 or e-mail comments to *huntingseis@fws.gov.* All comments received, including names and addresses, will become part of the public record. Anonymous comments will not be considered. Further, all written comments must be submitted on 8.5-by-11-inch paper. You may inspect comments during normal business hours in room 4107, 4501 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in bilateral conventions between the United States and Canada, Mexico, Japan, and Russia for the protection and management of these birds. Under the Migratory Bird Treaty Act and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are issued with due regard to ''the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and compatibility with the conventions. This responsibility has been delegated to the U.S. Fish and Wildlife Service of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service currently promulgates regulations allowing and governing the hunting of migratory game birds in the families Anatidae (waterfowl), Gruidae (cranes), Rallidae (rails), Scolopacidae (snipe and woodcock), and Columbidae (doves and pigeons). Regulations governing seasons and limits are promulgated annually, in part due to considerations such as the abundance of birds, which can change from year to year, and are developed by establishing the frameworks, or outside limits, for earliest opening and latest closing dates, season lengths, limits (daily bag and possession), and areas for migratory game bird hunting. These ''annual'' regulations have been promulgated by the Service each year since 1918. Other regulations, termed ''basic'' regulations (for example, those governing hunting methods), are promulgated once and changed only when a need to do so arises. All hunting regulations are contained in 50 CFR parts 20 and 92.

The Current Process for Establishing Sport Hunting Regulations

Acknowledging regional differences in hunting conditions and an increased understanding of population status and distribution, the Service in 1947 administratively divided the nation into four Flyways for the primary purpose of managing the harvest of migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The annual establishment of migratory game bird hunting regulations is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycles of migratory game birds control the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting-season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.,* dove, woodcock, etc.); and special early waterfowl seasons, such as those for teal or resident Canada geese. Early hunting seasons generally begin in early September. Late hunting seasons generally start in late September, and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing early and late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographic distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks are established by the Service for outside dates, season lengths, limits, and areas for migratory game bird hunting, States then select season dates, limits, and other regulatory options for their respective hunting seasons. States may be more conservative in their selections than the Federal frameworks allow but not more liberal.

The Tribal Process

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The current guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from

those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

The current process for establishing special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands consists of active solicitation of regulatory proposals from tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. Following submission of tribal proposals and review of proposals and population status information, proposed and final rules are published in a subsequent series of **Federal Register** documents. Similar to the establishment of the sport-hunting regulations, regulations are established for early-season and late-season hunting.

The Alaska Subsistence Process

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). In combination, the treaties prohibited all commercial bird hunting and specified a closed season on the taking of migratory game birds between March 10 and September 1 of each year. Additionally, and unfortunately, neither treaty adequately allowed for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which has occurred for centuries, was and is necessary to the subsistence way of life in the North and thus continued despite the closed season.

To remedy this situation, the United States negotiated Protocols amending the treaties to allow for subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

The major goals of the amended treaty with Canada were to allow traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada provides a means to allow permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years.

In 1998, we began a public involvement process to determine how to structure management bodies to provide the most effective and efficient involvement for subsistence users. This process was concluded on March 28, 2000, when we published in the **Federal Register** (65 FR 16405) the Notice of Decision: ''Establishment of Management Bodies in Alaska to Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the establishment and organization of 12 regional management bodies plus the Alaska Migratory Bird Co-management Council (Co-management Council).

Establishment of a migratory bird subsistence harvest began on August 16, 2002, when we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92 that set procedures for incorporating subsistence management into the continental migratory bird management program. These regulations established an annual procedure to develop harvest guidelines to implement a subsistence migratory bird harvest.

The first subsistence migratory bird harvest system was finalized on July 21, 2003, when we published in the **Federal Register** (68 FR 43010) a final rule at 50 CFR parts 20, 21, and 92 that created the first annual harvest regulations for the 2003 subsistence migratory bird season in Alaska. These annual frameworks were not intended to be a complete, all-inclusive set of regulations, but were intended to regulate continuation of customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. See the August 16, 2002, July 21, 2003, and April 2, 2004 (69 FR 17318), final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

Past NEPA Considerations—1975 EIS and 1988 SEIS

Migratory bird hunting is an activity of considerable ecological and socio-economic importance. Recent analyses indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion. Further, we estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004.

In June 1975, we published a programmatic document, ''Final Environmental Statement for Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54).'' The continuation of annual regulations was the proposed action and the preferred alternative. In 1988, we published an additional programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). The 1988 SEIS maintained the proposed action of issuing annual migratory bird hunting regulations. The Service's preferred alternative in the 1988 SEIS was to stabilize the so-called ''framework'' regulations (outside dates, season lengths, and limits) for fixed periods of time, subject to annual review and possible change according to population status; and to control the use of ''special'' regulations (*e.g.*, special seasons).

Since 1988, a number of developments have occurred. The status of some migratory bird populations has changed significantly. Advances in the collection and interpretation of data have been made, including expansion of breeding-ground waterfowl surveys and implementation of the Harvest Information Program. Adaptive Harvest

Management is now used as an approach for setting duck-hunting regulations in the United States and provides a framework for making objective decisions despite continued uncertainty about waterfowl population dynamics and regulatory impacts. The Alaska migratory bird subsistence regulations have been in existence since 2003. These developments and others make it desirable to supplement the preceding EIS documents and reexamine some of the issues associated with the issuance of annual regulations.

Issue Resolution and Environmental Review

We intend to develop a supplemental EIS on the ''Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds,'' beginning the process with this announcement. Federal and State agencies, private conservation organizations, and all other interested parties and individuals are invited to participate in the process by presenting their views on the subject. We seek suggestions and comments regarding the scope and substance of this supplemental EIS, particular issues to be addressed and why, and options or alternatives to be considered. In particular, in regard to the scope and substance of this supplemental EIS, we seek comments on the following:

(1) Harvest management alternatives for migratory game birds to be considered,

(2) Limiting the scope of the assessment to sport hunting (*i.e.*, exclusion of the Alaska migratory bird subsistence process), and

(3) Inclusion of basic regulations (methods and means).

Comments should be forwarded to the above address by the deadline indicated. We will conduct the development of this supplemental EIS in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4371 et seq.), other appropriate federal regulations, and Service procedures for compliance with those regulations. We are furnishing this Notice in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the supplemental EIS.

Public Scoping Meetings

A schedule of public scoping meeting dates, locations, and times is not available at this time. We will publish a notice of any such meetings in the **Federal Register**.

Dated: August 24, 2005.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–17798 Filed 9–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Big Game Guiding on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of solicitation.

SUMMARY: The U.S. Fish and Wildlife Service is soliciting proposals to conduct commercial big game guide services in six guide use areas on five national wildlife refuges in Alaska.

DATES: Proposals must be postmarked by, or hand delivered to the Alaska Regional Office at the address indicated below by, November 14, 2005.

FOR FURTHER INFORMATION CONTACT: Tony Booth or Debbie Steen, U.S. Fish and Wildlife Service, National Wildlife Refuge System—Alaska, Division of Visitor Services and Communications, 1011 East Tudor Road, M.S. 235, Anchorage, Alaska 99503; Telephone: (907) 786–3384 (Tony) or (907) 786–3665 (Debbie).

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is requesting proposals to conduct commercial big game guide services within guide use areas on four national wildlife refuges in Alaska that have become vacant or may become vacant soon. We will authorize big game guiding services on these areas for the period January 1, 2006, through December 31, 2010. We will award permits to conduct guiding services in these areas through a competitive selection process that is described in the prospectus. The offerings will include the following guide use areas:

Alaska Maritime Refuge—AKM–03
Alaska Peninsula/Becharof Refuge—BCH–06
Arctic Refuge—ARC–01, ARC–08
Kanuti Refuge—KAN–01
Koyukuk Refuge—KOY–02

Interested qualified guides who apply for the guide areas on the Arctic Refuge should be aware that the availability of both of those areas is uncertain at this time because the existing permittee may seek reconsideration or appeal a decision to not renew the permits. Interested qualified guides who apply for the guide area on the Koyukuk Refuge should be aware that the Service is in the process of revoking the existing KOY–02 permit. Since the Service does not plan to issue a separate notice for the Arctic and Koyukuk offerings, interested parties should submit proposals in response to this notice.

We will send a letter announcing these offerings to all State of Alaska-registered big game guides. You must postmark or hand deliver proposals to the Service at the address indicated above by 4 p.m., November 14, 2005.

Copies of the solicitation are available to any interested party by calling or writing the above telephone number or address.

Rowan W. Gould,

Regional Director, Anchorage, Alaska.

[FR Doc. 05–17760 Filed 9–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Reservation Roads Program Coordinating Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of the formulation of the Indian Reservation Roads Program Coordinating Committee under 25 CFR 170.155–158.

SUMMARY: The Secretary of the Interior is appointing tribal regional representatives to the Indian Reservation Roads (IRR) Program Coordinating Committee (Committee) as outlined under 25 CFR 170. The IRR final rules amending 25 CFR 170 include establishing a Committee to provide input and recommendations to the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) in developing IRR Program policies and procedures and to coordinate with and obtain input from tribes, BIA, and FHWA.

The Secretary announced on February 13, 2005, the request for nominations from tribal governments for representatives and alternates to serve on the Committee. Based on review of those nominations, the Secretary is announcing the representatives who will serve on the Committee in each of the 12 BIA regions.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Mail Stop 20–SIB, Washington, DC 20240, Telephone 202–513–7711 or Fax 202–208–4696.

SUPPLEMENTARY INFORMATION: The IRR final rules amending 25 CFR 170, effective November 13, 2004, are the

result of negotiated rulemaking between tribal and Federal representatives under the Transportation Equity Act for the 21st Century (TEA–21). The IRR final rules include the negotiated rulemaking committee's recommendation that the Secretary of the Interior and the Secretary of Transportation establish an IRR Program Coordinating Committee to provide input and recommendations to BIA and FHWA in developing IRR Program policies and to coordinate with and obtain input from tribes, BIA, and FHWA. As recommended, the Committee will consist of 12 tribal regional representatives (one from each BIA region) and two non-voting Federal representatives (from BIA and FHWA). In addition to the 12 tribal regional representatives, the Committee will include one alternate from each BIA region who will attend Committee meetings in the absence of the tribal regional representative. Each tribal regional representative must be a tribal governmental official or employee with authority to act for the tribal government.

The Secretary must select regional tribal representatives and alternates from nominees officially proposed by the region's tribes. The Secretary will appoint the initial tribal regional representatives and alternates from each BIA region to either a 1-, 2- or 3-year appointment in order to establish a yearly, one-third change in tribal regional representatives. All appointments thereafter will be for 3-year terms. To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small tribes. The Secretary of the Interior will provide guidance for the replacement of representatives.

The Secretary has selected 12 representatives from the regional nominees. In addition, 11 alternates have also been selected by the Secretary. No additional candidates were submitted by the Eastern Region tribes. The Secretary will entertain separate nominations from the tribes of Eastern Region. An orientation meeting for the primary and alternate committee members will be held at the BIA Southwest Regional Office, Conference Room #351, located at 1001 Indian School Road, NW, Albuquerque, NM, (505) 346–6834, on September 27–28, 2005.

IRR Program Coordinating Committee Members

Primary

Pete Red Tomahawk, Standing Rock Sioux Tribe, Great Plains Region
Chuck Tsoodle, Kiowa Tribe, Southern Plains Region
John Smith, Wind River Tribes, Rocky Mountain Region
Ed Thomas, Central Council of Tlingit Haida, Alaska Region
James Garrigan, Red Lake Band of Chippewa Indians, Midwest Region
Melanie (Fourkiller) Knight, Cherokee Nation of Oklahoma, Eastern Oklahoma Region
Erin S. Forrest, Hualapai Tribe, Western Region
Bo Mazzetti, Rincon Band of Lusieno Indians, Pacific Region
Royce Gchachu, Pueblo of Zuni, Southwest Region
Sampson Begay, Navajo Nation, Navajo Region
Michael Marchand, Confederated Tribes of the Colville, Northwest Region
Clint Hill, Oneida Indian Nation, Eastern Region

Alternates

Ed Hall, Three Affiliated Tribes of Mandan, Hidatsa and Arikira, Great Plains Region
Tim Ramirez, Prairie Band Potawatomi Nation, Southern Plains Region
C. John Healy, Sr., Fort Belnap Indian Community, Rocky Mountain Region
Wayne Lukin, Native Village of Port Lions, Alaska Region
Alof Olson, Mille Lacs Band of Ojibwe Indians, Midwest Region
Robert Endicott, Cherokee Nation of Oklahoma, Eastern Oklahoma Region
Kent Andrews, Salt River Pima Maricopa Indian Community, Western Region
Peggy O'Neill, Yurok Tribe, Pacific Region
Ed Little, Mescalero Apache Tribe, Southwest Region
Wilfred Frazier, Navajo Nation, Navajo Region
Kirk Vinish, Lummi Nation, Northwest Region
No candidates submitted, Eastern Region

Federal Members

Robert Sparrow, Federal Lands Highways, Washington DC
LeRoy Gishi, BIA Division of Transportation, Washington DC

The following table shows the term appointments by region:

Region	Term	Region	Term	Region	Term
Eastern Oklahoma	1	Great Plains	2	Southern Plains	3
Western	1	Rocky Mountain	2	Alaska	3
Southwest	1	Midwest	2	Pacific	3
Northwest	1	Navajo	2	Eastern	3

IRR Program Coordinating Committee Responsibilities

The responsibilities of the Committee are to provide input and recommendations to BIA and FHWA during the development or revision of:

- BIA/FHWA IRR Program Stewardship Plan;
- IRR Program policy and procedures;
- IRR Program eligible activities' determinations;
- IRR Program transit policy;
- IRR Program regulations;
- IRR Program management systems policy and procedures;
- IRR Program fund distribution formula (under 25 CFR 170.157); and
- National tribal transportation needs.

The Committee also reviews and provides recommendations on IRR Program national concerns, including implementation of 25 CFR 170, as amended.

IRR Program Coordinating Committee Role in the Funding Process

The Committee will provide input and recommendations to BIA and FHWA for:

- New IRR inventory data format and form;
- Simplified cost to construct (CTC) methodology (including formula calculations, formula program and design, and bid tab methodology);
- Cost elements;
- Over-design issues;
- Inflation impacts on $1 million cap for the Indian Reservation Roads High Priority Project (IRRHPP) and Emergency Projects (including the IRRHPP Ranking System and emergency/disaster expenditures report); and
- The impact of including funded but non-constructed projects in the CTC calculation.

IRR Program Coordinating Committee Conduct of Business

The Committee will hold two meetings per fiscal year. The Committee may call additional meeting(s) with the consent of one-third of Committee members or BIA or FHWA may call additional meeting(s). A quorum consists of eight voting Committee members. The Committee will operate by consensus or majority vote, as the Committee determines in its protocols. The Committee must elect from among the Committee membership a Chair, Vice-Chair, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. The Committee may prescribe other duties for the officers. Any Committee member can submit an agenda item to the Committee Chair.

IRR Program Coordinating Committee Reporting Requirements and Budget

The Committee must keep the Secretary and tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year. The Committee's budget, funded through the IRR Program management and oversight funds, will not exceed $150,000 annually.

Dated: August 18, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–17824 Filed 9–7–05; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–05–840–1610–241A]

Canyons of the Ancients National Monument Advisory Committee; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for the Canyons of the Ancients National Monument Advisory Committee, to replace two categories.

SUMMARY: BLM is publishing this notice under section 9(a)(2) of the Federal Advisory Committee Act. The notice requests the public to submit nominations for membership on the Committee. The Committee is necessary to advise the Secretary and BLM on resource management issues associated with Canyons of the Ancients National Monument.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than 30 days after date of publication of this notice in the **Federal Register**.

ADDRESSES: Send nominations to: Manager, Canyons of the Ancients National Monument, Bureau of Land Management, 27501 Highway 184, Dolores, Colorado 81323.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager or Stephen Kandell, Monument Planner at (970) 882–5600, or e-mail *Colorado_CANM@co.blm.gov*. The existing Monument Web site is currently unavailable.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Canyons of the Ancients National Monument Advisory Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms from the Canyons of the Ancients National Monument Manager, Bureau of Land Management (*see* **FOR FURTHER INFORMATION CONTACT** above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Canyons of the Ancients National Monument Manager. You may make nominations for the following categories of interest:

- A representative of the Dolores County Commission (appointed from nominees submitted by the Dolores County Commission); and
- Persons representing any of the following tribes and pueblos representing Native American interests: The Ute Mountain Tribe, The Uintah-Ouray Ute Tribe, The Southern Ute Tribe, The Navajo Nation, The Hopi Tribe, The Pueblo of Acoma, The Pueblo of Cochiti, The Pueblo of Isleta, The Pueblo of San Felipe, The Pueblo of Santa Ana, The Pueblo of Santo Domingo, The Pueblo of Jemez, The Pueblo of Laguna, The Pueblo of Sandia, The Pueblo of Zia, The Pueblo of Zuni, The Pueblo of Nambe, The Pueblo of San Juan, The Pueblo of Picuris, The Pueblo of Pojoaque, The Pueblo of San Ildefonso, The Pueblo of Santa Clara, The Pueblo of Taos, The Pueblo of Tesuque (appointed from nominees submitted by the Bureau of Land Management).

The specific category the nominee would like to represent should be identified in the letter of nomination and in the nomination form. The Canyons of the Ancients National Monument Manager will collect the nominations and letters of reference and then forward them to the Secretary of the Interior who has final authority for making the appointments.

The purpose of the Canyons of the Ancients National Monument Advisory Committee is to advise the Bureau of Land Management concerning development and implementation of a management plan for public lands within Canyons of the Ancients National Monument. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The membership term will be for four years.

Dated: September 1, 2005.

LouAnn Jacobson,

Monument Manager, Canyons of the Ancients National Monument.

[FR Doc. 05–17774 Filed 9–7–05; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1310–DB]

Notice of Intent To Prepare an Environmental Impact Statement for the Creston/Blue Gap II Natural Gas Project, Carbon and Sweetwater Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Under Section 102 (2) (C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Rawlins Field Office, announces its intent to prepare an EIS on the potential impacts of a proposed natural gas development project consisting primarily of conventional gas well development, but also including approximately 100 coal bed natural gas wells.

In April 2005, the BLM received a proposal from Devon Energy Corporation representing themselves and other lease holders in the area, to drill and develop up to 1,250 wells from an estimated 1000 well pad sites and install and operate associated facilities. The proposed project area encompasses approximately 184,000 acres of mixed Federal, State, and private land, and overlies a natural gas field analyzed

under the Creston/Blue Gap Natural Gas Project Final EIS (1994). Project development and the operational period is expected to have a 30 to 40 year life. The project area is located approximately 40 air miles southwest of the city of Rawlins, Carbon County, Wyoming.

DATES: This notice initiates the public scoping process. The BLM can best use public input if comments and resources information are submitted within 60 days of the publication of this notice. To provide the public with an opportunity to review the proposal and project information, the BLM will host a meeting in Rawlins, Wyoming. The BLM will notify the public of the meeting date, time and location at least 15 days prior to the event. Announcement will be made by news release to the media, individual letter mailings, and posting on the BLM Web site listed below if it is available.

ADDRESSES: Please send written comments or resource information to the Bureau of Land Management, Rawlins Field Office, Eldon Allison, Team Leader, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301. Electronic mail may be sent to: *rawlins_wymail@blm.gov.* Additionally, if available, the scoping notice will be posted on the Wyoming BLM NEPA Web page at *http://www.wy.blm.gov/nepa/nepadocs.htm.*

Your response is important and will be considered in the environmental analysis process. If you do respond, we will keep you informed of decisions resulting from this analysis. Please note that public comments and information submitted regarding this project including names, e-mail addresses, and street addresses of the respondents will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name, e-mail, or street address from public review or from disclosure under the Freedom of Information Act, you must state this plainly at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Eldon Allison, Project Manager, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301. Mr. Allison may also be reached by telephone at (307) 328–4291, or by sending an electronic message to: *Eldon_Allison@blm.gov.*

SUPPLEMENTARY INFORMATION: Devon Energy Corporation (Devon) is the primary applicant and has proposed drilling and developing up to 1,250 conventional natural gas and coal bed natural gas wells from up to 1000 well pad locations. Associated project facilities would include roads, well pads, gas and water collection pipelines, compressor stations, water disposal systems, and a power supply system. During the preparation of the EIS, any interim development on public lands will require a detailed environmental review by the BLM. Such a review will determine what, if any, development could and/or would be authorized based on the analysis of the environmental impacts without having an adverse environmental impact and/or potential to limit selection within the range of reasonable alternatives for this proposed Creston/Blue Gap II Project and/or the range of reasonable within alternatives pending Rawlins RMP revision/EIS.

The Creston Blue/Gap II Natural Gas Project is located in Townships 14, 15, 16, 17, 18, and 19 North, Ranges 91, 92, 93, and 94 West, Sixth Principal Meridian, Carbon and Sweetwater Counties, Wyoming. The project area is located approximately 40 air miles southwest of Rawlins along the east and west sides of Wyoming State Highway 789. The project area is approximately 184,000 acres in size and involves a mixture of mostly Federal (71%) and private (26%) surface with some State land (3%). The BLM Rawlins Field Office manages the Federal surface lands and the Federal mineral estate.

The purpose of the natural gas development is to extract and recover natural gas from the Creston/Blue Gap II area and to provide more natural gas for distribution to consumers. This project confirms with the goals and objectives of the President's National Energy Plan, through proposing to increase domestic energy supplies and strengthen America's energy security. The proposed action may add up to 200 million cubic feet of natural gas per day into the market to help meet this growing national demand.

The EIS will address cumulative impacts and will include consideration of the effects of the project. Potential issues to be addressed in the EIS include but are not limited to: surface and ground water resources, air quality, wildlife populations and their habitats, private and public land access concerns, road development and transportation, reclamation, noxious weeds livestock grazing, cultural and paleontological resources, threatened and endangered wildlife and plant species, and socioeconomic impacts.

The project area is managed under the Great Divide Resource Management Plan (RMP) (1990). This RMP is currently being revised under the title of Rawlins Resource Management Plan. A Draft EIS for the Rawlins RMP was released in December 2004. A decision for the Creston/Blue Gap II Natural Gas Project (C/BG2 Project) will not be made nor implemented until after a Record of Decision is issued for the Rawlins RMP revision FEIS.

Dated: June 24, 2005.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 05–17919 Filed 9–7–05; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

Proposed Collection; Comment Request

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The proposed information collection is a user survey that solicits feedback on the investigative procedures used by the Commission in its import injury investigations. Comments concerning the proposed user survey are requested in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 7, 2005.

ADDRESSES: Direct all written comments to Marilyn Abbott, Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection may be obtained from: Debra Baker, Office of Investigations, U.S. International Trade Commission (phone number—202–205–3180; e-mail address-*Debra.Baker@usitc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The proposed information collection seeks to gather feedback to allow the Commission to ensure that its procedures for its import injury

investigations are fair and are equitably implemented. The user survey asks if the Commission's rules and other written guidance make clear to participants what the Commission expects of them procedurally in an investigation; if there are area(s) where additional guidance would be of benefit to their participation in investigations; if the Commission personnel responded to procedural inquiries in a helpful way; if their access to information collected by/submitted to the Commission was satisfactory; and if they have any other comments or recommended improvements.

II. Method of Collection

The user survey is a one-page form that will be sent to firms that have participated in an antidumping, countervailing duty, or safeguard investigation since October 1, 2003. Responses are voluntary.

III. Data

OMB Number: 3117–0192.
Type of Review: Regular submission.
Affected Public: Law firms and economic consulting groups.
Estimated Number of Respondents: 50.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 50 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $10,750 ($10,000 for respondents and $750 for the Federal government).

IV. Request for Comments

Comments are solicited as to (1) whether the user survey is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and costs) of the user survey; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the user survey on those who are to respond (including through the use of automated collection techniques or other technological forms of information technology).

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

By order of the Commission.

Issued: August 31, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17738 Filed 9–7–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–529]

In the Matter of Certain Digital Processors, Digital Processing Systems, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of a License Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') granting a joint motion to terminate the above-captioned investigation on the basis of a license agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the nonconfidential version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 6, 2005, based on a complaint filed on behalf of BIAX Corporation (''BIAX''), of Boulder, Colorado (70 FR 1277). The complaint alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain digital processors, digital processing systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 4,487,755 (''the '755 patent''); 5,021,954 (''the '954 patent''); 5,517,628; 6,253,313; and 5,765,037. The notice of investigation named Texas Instruments, Inc. (''TI''), of Dallas, Texas; iBiquity Digital Corporation, of Columbia, Maryland; Kenwood Corporation, of Japan; and Kenwood U.S.A. Corporation, of Long Beach, California as respondents.

On April 12, 2005, respondent TI filed a motion for summary determination of non-infringement of the asserted claims of the '755 and '945 patents. On May 20, 2005, complainant BIAX filed its opposition to TI's motion for summary determination. On May 23, 2005, the Commission's investigative attorney filed an opposition to TI's motion for summary determination.

On July 12, 2005, the administrative law judge (''ALJ'') issued an ID, Order No. 18, granting respondent TI's motion for summary determination of non-infringement of the asserted claims of the '755 and '945 patents. On July 19, 2005, complainant BIAX filed a petition for review of Order No. 18.

On July 20, 2005, the parties filed a joint motion to extend the deadline for filing responses to BIAX's petition for review of Order No. 18 until August 10, 2005, and to extend the deadline for the Commission to determine whether to review Order No. 18 until August 30, 2005. On July 22, 2005, the Chairman extended the deadline for filing responses to the BIAX's petition for review of Order No. 18 until August 10, 2005.

On August 1, 2005, the Commission determined to extend the deadline for determining whether to review the Order No. 18, granting respondent TI's motion for summary determination of non-infringement of the asserted claims of the '755 and '945 patents, by 30 days, *i.e.*, until September 12, 2005.

On August 3, 2004, complainant BIAX and respondents filed a joint motion to terminate the investigation based on a license agreement between BIAX and respondent TI. The Commission investigative attorney supported the joint motion.

On August 8, 2005, the presiding ALJ issued the subject ID (Order No. 23) granting the joint motion to terminate the investigation based on a license agreement between BIAX and respondent TI. No party filed a petition to review the subject ID. The Commission has determined not to review ALJ Order No. 23.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.42 of Rules of Practice and Procedure, 19 CFR 210.42.

Issued: September 1, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17737 Filed 9–7–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–521]

In the Matter of Certain Voltage Regulator Circuits, Components Thereof and Products Containing Same; Notice of Decision Not To Review an Initial Determination Extending the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on August 10, 2005, extending the target date for completion of the above-captioned investigation to June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the IDs and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 17, 2004, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Linear Technology Corporation of Milpitas, California (''Linear'') alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain voltage regulator circuits, components thereof and products containing same by reason of infringement of claims 1–6, 31, 34–35, 41, 44–48, and 51–57 of U.S. Patent No. 5, 481,178 (''the ''178 patent''), and claims 1–19, 31, 34, and 35 of U.S. Patent No. 6,580,258. 69 FR 51104 (August 17, 2004). The complainant named Monolithic Power Systems, Inc. of Los Gatos, California as respondent.

On March 16, 2005, the ALJ issued an initial determination (''ID'') (Order No. 12) extending the target date in the above-referenced investigation. The extension of the target date was necessary due to the previous postponement of the hearing due to the unavailability of witnesses. The ALJ determined that the target date for this investigation should be set at 18 months from institution, *i.e.*, February 17, 2006. No party petitioned for review of the ID, the Commission declined to review it, and it therefore became the determination of the Commission.

The hearing, which had been scheduled to commence on June 22, 2005, could not be held as scheduled. The ALJ issued Order No. 15 on July 27, 2005, rescheduling the hearing for October 5, 2005. On August 10, 2005, the ALJ issued an ID (Order No. 6) extending the target date for completion of the investigation until June 14, 2006.

No party petitioned for review of the ID and the Commission has determined not to review the ID, permitting it to become the determination of the Commission.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: August 31, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17739 Filed 9–7–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 30, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Regular extension of a currently approved collection.

Title: Title 29 CFR Part 29 '' Labor Standards for the Registration of Apprenticeship Programs.

OMB Number: 1205–0223.

Affected Public: Business or other for-profits.

Type of Response: Required to obtain or retain benefits.

Number of Respondents: 283,031.

Annual Responses: 283,031.

Average Response time: 2 hours per sponsor.

Total Annual Burden Hours: 55,632.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Title 29 CFR part 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures

concerning registration of apprenticeship.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–17782 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 30, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Onsite Consultation Agreements (29 CFR Part 1908).

OMB Number: 1218–0110.

Frequency: On occasion; Quarterly; Biennially; and Annually.

Type of Response: Reporting; Recordkeeping; and Third party disclosure.

Affected Public: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit institutions; and Federal Government.

Number of Respondents: 31,048.

Number of Annual Responses: 31,000.

Estimated Time Per Response: Varies from 3 minutes for an employer or plant manager to sign a safety and health achievement recognition program application to 32 hours for an onsite consultation program manager to submit an agreement once per year.

Total Burden Hours: 21,771.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Section 7(c)(1) of the Act authorizes the Secretary of Labor to, ''with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement.'' Section 21(C) of the Act authorizes the Secretary of Labor (Secretary) to, ''consult with and advise employers and employees * * * as to effective means of preventing occupational illnesses and injuries.''

Additionally, Section 21(d) of the Act instructs the Secretary to ''establish and support cooperative agreements with the States under which employers subject to the Act may consult with State personnel with respect to the application of occupational safety and health requirements under the Act or under State plans approved under section 18 of the Act.'' This gives the Secretary authority to enter into agreements with the States to provide onsite consultation services, and established rules under which employers may qualify for an inspection exemption. To satisfy the intent of these and other sections of the Act, OSHA codified the terms that govern cooperative agreements between OSHA and State governments whereby State agencies provide onsite consultation services to private employers to assist them in complying with the requirements of the OSH Act. The terms were codified as the Consultation Program regulations (29 CFR part 1908).

The Consultation Program regulations specify services to be provided, and practices and procedures to be followed by the State Onsite Consultation Programs. Information collection requirements set forth in the Onsite Consultation Program regulations are in two categories: State Responsibilities and Employer Responsibilities. Eight regulatory provisions require information collection activities by the State. The Federal government provides 90 percent of funds for onsite consultation services delivered by the States, which result in the information collection. Four requirements apply to employers and specify conditions for receiving the free consultation services.

Agency: Occupational Safety and Health Administration.

Type of Review: New collection of Information.

Title: Survey of Automatic External Defibrillator use in Occupational Setting.

OMB Number: 1218–0NEW.

Frequency: One time.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 4,000.

Number of Annual Responses: 5,036.

Estimated Time Per Response: 10 to 15 minutes.

Total Burden Hours: 551.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Management and Budget (OMB) has requested that OSHA conduct a comprehensive study of the usefulness and efficacy of Automatic External Defibrillator (AEDs) in occupational settings. To gather more information about AED use in occupational settings, OSHA will conduct a statistical survey of selected establishments in OSHA-regulated industrial sectors to develop statistically accurate estimates of the current prevalence of AED programs in various industrial sectors. OHSA will also develop estimates of the percentages of establishments that have considered, but not implemented such programs. Additionally, OSHA will collect information on the characteristics of AED programs and establishments (*e.g.*, size, industry, workforce age distribution, etc.) that

may correlate with the presence or lack of an AED program. Finally, OSHA plans to supplement the statistical survey with extended case study interviews with selected respondents from the statistical survey. These interviews will provide in-depth, albeit qualitative, information about various factors that influence decisions on whether to implement AED programs, as well as about the circumstances that underlie the cost and effectiveness of such programs.

OSHA has conducted a thorough search and review of existing studies and other literature about AED use. Only limited information is available about AED use in occupational settings, although substantial literature exists addressing AED use in public settings. In addition, OSHA found little direct evidence about AED cost-effectiveness in the workplace. Collection of information sought by OSHA from establishments concerning the use of automatic external defibrillators in occupational settings will include:

1. Profile information, including industry, type of operation, number of employees, age distribution of employees, presence of safety or health professionals on staff, and experience with sudden cardiac events.

2. Characteristics of AED programs in place, including number of units, number of employees trained, type and frequency of training, and percentage of workforce protected by AEDs.

3. Factors influencing decisions whether to invest in AED equipment or implement an AED program, including experience with sudden cardiac events, role of marketing by AED manufacturers, costs of AED equipment, costs of training, cost of maintenance, and liability concerns.

4. Frequency of use of AED units and their effectiveness in cases of employee heart attacks or other sudden cardiac events.

5. In-depth interviews on issues identified with respect to Topics 2, 3, and 4 will be conducted during post-survey case study interviews.

OHSA plans to use this information, first, to identify the occupational settings in which AEDs are most cost-effective. Second, OSHA will use the survey results to identify barriers to expanding AED use and to help design effective outreach programs to encourage establishments to install AED equipment. Without this survey, OSHA will lack information about the current prevalence of AED programs in occupational settings. The Agency will also lack information on the characteristics of establishments with and without AED programs and about the factors that have influenced establishments' decisions whether to implement AED programs. Without this knowledge, OSHA will have difficulty determining the efficacy of different strategies that might be used to encourage the implementation of workplace AED programs such as developing outreach and promotion programs.

The proposed collection of information consists of a two-stage statistical survey of at least 1,000 establishments in OSHA-regulated industries that have 100 or more employees. In the first stage, OSHA will survey establishments from the universe population to gather baseline profile information and to screen for establishments that either (1) have an AED program in place, or (2) have considered implementing an AED program but have not done so. In the second stage, screened respondents will be asked questions specific to which group their establishment belongs (*i.e.*, currently has an AED program or considered but has not implemented such a program).

As an adjunct to the statistical survey, OSHA plans to conduct as many as 36 in-depth case study interviews with selected volunteers among respondents in both the groups that do and do not have AED programs. These open-ended interviews will permit OSHA to gather detailed qualitative information about key issues pertaining to the implementation, cost, and effectiveness of AED programs and factors deterring implementation of such programs.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–17783 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 30, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Contribution Operations.

OMB Number: 1205–0178.

Frequency: Quarterly.

Affected Public: State, local, or tribal government.

Number of Respondents: 53.

Number of Annual Responses: 212.

Total Burden Hours: 1,802.

Estimated Time Per Response: 8.5 hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The ETA Form 581 is a comprehensive report of each state's UI tax operations and is essential in providing quarterly tax operation performance data to DOL. Currently DOL uses this information in monitoring and measuring program performance and making projections and forecasts in conjunction with the budgetary process.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–17784 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,129]

ADM Milling Company, Wellsburg, WV; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at ADM Milling Company, Wellsburg, West Virginia. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,129; ADM Milling Company Wellsburg, West Virginia (August 24, 2005)

Signed at Washington, DC, this 26th day of August, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4880 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 19, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 19, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of August, 2005.

Terrance Clark,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 08/15/2005 and 08/19/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,740	Baron Drawn Steel (Comp)	Toledo, OH	08/15/2005	08/12/2005
57,741	Globetrans Network, Inc. (NPS)	Staten Island, NY	08/15/2005	08/12/2005
57,742	Agilent Technologies, Inc. (Comp)	Santa Rosa, CA	08/15/2005	08/12/2005
57,743	Sulzer-Sturm Rapid Response Center (Comp)	Barboursville, WV	08/15/2005	08/10/2005
57,744	Nissan Motor Manufacturing (Wkrs)	Smyrna, TN	08/15/2005	07/08/2005
57,745	USR Optonix (State)	Hackettstown, NJ	08/15/2005	08/15/2005
57,746	Joan Fabrics (Comp)	Spindale, NC	08/16/2005	08/05/2005
57,747	Lubizol Corporation (The) (Wkrs)	Mountaintop, PA	08/16/2005	08/12/2005
57,748	SportRack Port Accessories (State)	Huron, MI	08/16/2005	08/15/2005
57,749	Slater Companies (The) (Comp)	Pawtucket, RI	08/16/2005	08/15/2005
57,750	Pennsylvania House (Comp)	Lewisburg, PA	08/16/2005	08/08/2005
57,751	Pulaski Rubber Company (Comp)	Pulaski, TN	08/16/2005	08/15/2005
57,752	Nestle USA (Comp)	St. Louis, MO	08/16/2005	08/12/2005
57,753	Transcanada GTN System (Wkrs)	Rosalia, WA	08/16/2005	08/11/2005
57,754	Delphi Corporation (Comp)	Kettering, OH	08/16/2005	08/15/2005
57,755	Johnston Textiles, Inc. (Comp)	Phenix City, AL	08/16/2005	08/13/2005
57,756	FiberMark (State)	Milford, NJ	08/16/2005	08/16/2005
57,757	Meryl Diamond Ltd. (Comp)	New York, NY	08/16/2005	08/16/2005
57,758	Optek Technology (Comp)	Carrollton, TX	08/17/2005	08/16/2005
57,759	Unifi, Inc. (Comp)	Mayodan, NC	08/17/2005	08/16/2005
57,760	Clarion Technologies (Wkrs)	South Haven, MI	08/17/2005	08/11/2005
57,761	Stimson Lumber Company (UBC)	Bonner, MT	08/17/2005	08/16/2005
57,762	Crotty (State)	Celina, TN	08/17/2005	08/13/2005
57,763	Coats North America (Wkrs)	Greer, SC	08/17/2005	08/08/2005
57,764	Merrimac Paper Co., Inc. (Wkrs)	Lawrence, MA	08/18/2005	08/18/2005
57,765	Metz Tool and Die (Comp)	Rockford, IL	08/18/2005	08/08/2005
57,766	Southern Graphic Systems (Comp)	Louisville, KY	08/18/2005	08/17/2005
57,767	General Electric Consumer Components (State)	Conover, NC	08/18/2005	08/17/2005
57,768	Younger Optics (State)	Torrance, CA	08/18/2005	08/12/2005
57,769	Quality Footwear (Comp)	Fort Payne, AL	08/18/2005	08/16/2005
57,770	Elementis Pigments Corporation (Wkrs)	East St. Louis, IL	08/18/2005	08/11/2005
57,771	The Prince Mfg. Co. (Comp)	Bowmanstown, PA	08/18/2005	08/11/2005
57,772	Bob's Candies, Inc. (Wkrs)	Albany, GA	08/18/2005	08/11/2005

APPENDIX—Continued

[Petitions instituted between 08/15/2005 and 08/19/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,773	OWT Industries, Inc. (Comp)	Pinkins, SC	08/18/2005	08/17/2005
57,774	Preco, Inc. (Wkrs)	Boise, ID	08/18/2005	08/08/2005
57,775	Pleasant Hill Veneer Corp (Wkrs)	Pleasant Hill, MO	08/18/2005	07/27/2005
57,776	Brockway Pressed Metals, Inc. (USWA)	Brockway, PA	08/18/2005	08/17/2005
57,777	Gemtron Corporation (Wkrs)	Sweetwater, TN	08/18/2005	08/16/2005
57,778	Kemtah Group, Inc (State)	Corvllis, OR	08/18/2005	08/17/2005
57,779	Sonoco, Inc. (Comp)	Canandaigua, NY	08/18/2005	08/17/2005
57,780	Cintas Rockcastle Mt. Mfg. (Comp)	Vernon, KY	08/18/2005	08/05/2005
57,781	Nu-Gro Technologies, Inc. NY (NPC)	Gloversville,	08/18/2005	08/15/2005
57,782	McLaughlin Co. (State)	Petoskey, MI	08/18/2005	08/08/2005
57,783	Brick Lens Restaurant (State)	Greenfield, MA	08/18/2005	08/05/2005
57,784	Greenfield Inn (NPS)	Greenfield, MA	08/18/2005	08/05/2005
57,785	Greenfield Montague Transit Area (NPS)	Greenfield, MA	08/18/2005	08/05/2005
57,786	Laufen Interntional, Inc. (Comp)	Tulsa, OK	08/18/2005	07/29/2005
57,787	Cross Stone Product, LLC (Comp)	Bristol, VA	08/18/2005	07/25/2005
57,788	AmbiTech, Inc. (Comp)	Chatsworth, CA	08/18/2005	08/03/2005
57,789	Amveco Magnetics, Inc. (Comp)	Houston, TX	08/18/2005	08/10/2005
57,790	Sail (Wkrs)	Piscataway, NJ	08/18/2005	08/09/2005
57,791	Accellent (Comp)	Corry, PA	08/18/2005	08/05/2005
57,792	Kwan Sewing (Comp)	San Francisco, CA	08/19/2005	07/25/2005
57,793	GE Consumer Finance (Wkrs)	Schaumburg, IL	08/19/2005	08/02/2005
57,794	Cognis Corporation (USWA)	Cincinnati, OH	08/19/2005	08/18/2005
57,795	3 M (State)	Fairmont, MN	08/19/2005	08/18/2005
57,796	TCS Manufacturing, Inc. (Comp)	Jamestown, NY	08/19/2005	08/12/2005
57,797	Southwire (State)	Long Beach, CA	08/19/2005	08/11/2005
57,798	Power-One (Wkrs)	Carlsbad, CA	08/19/2005	08/10/2005
57,799	Demag Cranes and Components (IBT)	Cleveland, OH	08/19/2005	08/08/2005
57,800	Nuvo Network Management Corp. (Comp)	Pennsauken, NJ	08/19/2005	08/09/2005
57,801	Johnson Controls, Inc. (Comp)	Holland, MI	08/19/2005	08/11/2005
57,802	Sara Lee Corporation (Wkrs)	Winston Salem, NC	08/19/2005	07/29/2005
57,803	Viasystems Consumer Group (Comp)	Mishawaka, IN	08/19/2005	09/18/2005
57,804	Kellwood Company (Comp)	Summit, MS	08/19/2005	08/17/2005
57,805	Edward Fields, Inc. (Wkrs)	College Point, NY	08/19/2005	07/28/2005
57,806	Harper Pet Products, Inc. (Comp)	Bedford Park, IL	08/19/2005	08/17/2005

[FR Doc. E5–4884 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,230]

Lear Automotive Manufacturing, LLC, Monroe, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Lear Automotive Manufacturing, LLC, Monroe, Michigan. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,230; Lear Automotive Manufacturing, LLC Monroe, Michigan (August 31, 2005)

Signed at Washington, DC, this 31st day of August, 2005.

Terrance Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4881 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of August 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially

separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,637; Merck & Company, Inc., Xanthan Gum Product Line, Danville, PA

TA–W–57,472; H-Tech Seating Products, Inc., d/b/a Kustom Fit, South Gate, CA

TA–W–57,519; Owens-Illinois Healthcare Packaging, a div. of The Owens-Illinois, Inc., Sullivan, IN

TA–W–57,449; Unicircuit-Roseville, Inc., a subsidiary of Unicircuit, Inc., Roseville, MN

TA–W–57,368; Holyoke Card Company, Inc., Springfield, MA

TA–W–57,443; Multitone Engraving Co., Inc., Rochelle Park, NJ

TA–W–57,560; Gross Given Manufacturing, Saint Paul, MN

TA–W–57,621; Abbott Laboratories, North Chicago Plant, Global Pharmaceuticals Operations, North Chicago, IL

TA–W–57,491; Iberia Sugar Cooperative, Inc., New Iberia, LA

TA–W–57,575; Milford Stitching Co., Inc., a div. of GLK, Inc., Milford, DE

TA–W–57,534A; RAM Industries, LLC, PCB Department, including on-site leased workers of Gage Personnel Services, Contemporary @ Work Personnel Services, and Manpower Temporary Services, Leesport, PA

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,503; Office Equipment Services, Inc., Paw Paw, WV

TA–W–57,584; Credence Systems Corp., including on-site leased workers of HR Staffing, Acrotek and Volt, Simi Valley, CA

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–57,559; Alexander Fabrics, LLP, Burlington, NC

TA–W–57,719; Swan Dyeing & Printing Corp., Fall River, MA

TA–W–57,568; Sam Moore Furniture Industries, a subsidiary of La-Z-Boy, Inc., Bedford, VA

TA–W–57,483; Bronze Craft Corp., Nashua, NH

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–57,646; Mason Companies, Inc., Distribution Center, Chippewa Falls, WI

TA–W–57,493; Qualex, Inc., a subsidiary of Eastman Kodak, Kodak Service and Support, Telemaintenance Call Center, Durham, NC

TA–W–57,608; Accenture LLP, Houston, TX

TA–W–57,703; DPS Enterprises, Inc., Macon, GA

TA–W–57,739; Bon Worth, Inc., Bonworth Distribution Center, Hendersonville, NC

TA–W–57,552; Gas Transmission Service Co., LLC, a div. of The Transcanada Corp., Sandpoint, ID

TA–W–57,585; Delta Air Lines, Technical Operations, Atlanta, GA

TA–W–57,600; Philips Consumer Electronics, Philips Service Organization, Service Contracts, Claims, Credit and Special Projects Departments, Knoxville, TN

TA–W–57,587; WTTC, Inc. El Paso, TX

TA–W–57,642; Andrews Center, Tyler, TX

TA–W–57,566; Household Shanghai Benefit Corp (HSBC), Regional Processing Center, Pomona, CA

TA–W–57,658; Kellwood Company, Calhoun City, Mississippi Distribution Center, Calhoun City, MS

TA–W–57,697; Dorr-Oliver Eimco USA, Inc., Salt Lake City, UT

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–57,475; Onux Medical, Inc., Hampton, NH

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

NONE

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–57,554; Magnetics, a div. of Spang & Co., Booneville, AR: January 8, 2005.

TA–W–57,495; VMC Volt Services Group, workers at Hewlett-Packard Co., imaging and Printing Group-Personal Inkjet Printing Div., Vancouver, WA: June 29, 2004.

TA–W–57,459; Cardinal Brands, Inc., Hazel Promotional Products Div., Washington, MO: June 23, 2004.
TA–W–57,487; Continental Tire North America, Inc., a div. of Continental AG, Charlotte, NC: June 23, 2004.
TA–W–57,482; Industrial Distribution Group, working on-site at Oldham Saw Co., a subsidiary of Black and Decker, West Jefferson, NC: June 27, 2004.
TA–W–57,440; Trends Clothing Corp., Miami, FL: November 9, 2004.
TA–W–57,353 & A; Westpoint Home, Inc., formerly known as Westpoint Stevens, Inc., Bath Products Div., Wagram, NC and Bed Products Div., Calhoun Plant, Calhoun Falls, SC: June 8, 2004.
TA–W–57,407; Cativa, Inc., New York, NY: May 27, 2004.
TA–W–57,205; Royal Oak Enterprises, Inc., a div. of Royal Oak Sales, Inc., White City, OR: May 17, 2004.
TA–W–57,499; National Spinning Operations, LLC, Warsaw, NC: June 30, 2004.
TA–W–57,633; Corona Clipper, Inc., Corona, CA: July 19, 2004.
TA–W–57,626; Willowbrook Hosiery, Burlington, NC: July 26, 2004.
TA–W–57,610; Gerdau Ameristeel, Beaumont Mill Div., workers' wages were reported under Cargill, Inc., Beaumont, TX: July 6, 2005.
TA–W–57,580; Genlyte Group, Inc., Gardco Lighting Div., San Leandro, CA: July 6, 2004.
TA–W–57,535; Wayatec Electronics, Lynchburg, VA: July 11, 2004.
TA–W–57,594; F & M Hat Company, Inc., Bierner Hat Co., Div., Dallas, TX: July 18, 2004.
TA–W–57,593; Made in America, Inc., Waycross, GA: July 15, 2004.
TA–W–57,582; EPEC, LLC, New Bedford, MA: July 15, 2004.
TA–W–57,564; Bush Industries, Inc., Jamestown, NY: June 28, 2004.
TA–W–57,531; Agrium U.S., Inc., KFO Div., Kennewick, WA: June 27, 2004.
TA–W–57,524; USA Knit, Inc., Fort Payne, AL: July 7, 2004.
TA–W–57,523; ABC Hosiery, Inc, Chattanooga, TN: July 7, 2004.
TA–W–57,510; Green Printing and Packaging Co., including on-site leased workers of Stewart and Ablest, Lexington, NC: June 29, 2004.
TA–W–57,369; U.S. Aluminum, Inc., Haskell, NJ: June 10, 2004.
TA–W–57,500; Amital Spinning Corp., Wallace Plant, Wallace, NC: January 24, 2005.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–57,577; Brunswick Family Boat Co., d/b/a U.S. Marine Bayliner, Pipestone, MN: July 19, 2004.
TA–W–57,581; L&L Leather LLC, Brownsville, TX: July 6, 2004.
TA–W–57,570; Acme-McCrary Corp., Silver City, NC: July 18, 2004.
TA–W–57,565; American Textile Marketing, Inc., Meritas Yarns Div., including leased on-site workers of Staffing Solutions, Columbus, GA: July 1, 2004.
TA–W–57,534; RAM Industries, LLC, Harnessing Department, including on-site leased workers of Gage Personnel Services, Contemporary @ Work Personnel Services, and Manpower Temporary Services, Leesport, PA: July 11, 2004.
TA–W–57,530; General Electric, Consumer & Industrial Div., a subsidiary of General Electric Co., Jonesboro, AR: August 8, 2005.
TA–W–57,528; Tower Automotive, Inc., Granite City, IL: July 5, 2004.
TA–W–57,528A; Tower Automotive, Inc., Corydon, IN—Has been Terminated—Workers are covered by an active certification—TA–W–57, 122 which expires on June 13, 2007.
TA–W–57,514; Painting Red Rhinos, Mechanicsburg, PA: July 5, 2004.
TA–W–57,496; Dukal Corp., formerly Known as Hermitage Hospital Products, Niantic CT: June 30, 2004.
TA–W–57,623; Lambert of Arkansas, Inc., Hughes, AR: July 25, 2004.
TA–W–57,520; Continental Tire North America, Inc. (CTNA), a subsidiary of Continental AG, Mayfield, KY: July 8, 2005.
TA–W–57,501; Unifi, Inc., Textured Div., Reidsville Plant #2, Reidsville, NC: July 1, 2004.
TA–W–57,479; Robert Bosch Tool Corp., Toccoa Div., Eastanollee, GA: June 24, 2004.
TA–W–57,466; Varco-Pruden Buildings, a subsidiary of Grupo IMSA, Memphis, TN: June 24, 2004.
TA–W–57,539; Robert Bosch North America, Automotive Technology—Chassis, including on-site leased workers of Staffmark, Securitas, and Southern Universal, Gallatin, TN: July 12, 2004.
TA–W–57,506; Viskase Corp., Kentland, IN: June 28, 2004.
TA–W–57,455; Brand Mills, Ltd, Kaibobo Interprises Corp., d/b/a Resource Payroll Co., Hackensack, NJ: June 10, 2004.
TA–W–57,390; Commemorative Brands, Inc., a div. of American Achievement Corp., El Paso, TX: June 13, 2004.
TA–W–57,622; K and K Framing, LLC, Booneville, MS: July 23, 2004.
TA–W–57,704; Sanmina-SCI Corp., Clinton, NC: August 4, 2004.
TA–W–57,612; Warvel Products, Inc., Transolid Div., Linwood, NC: July 19, 2004.
TA–W–57,544; Husky Injection Molding Systems, Inc., Controls Div., Milton, VT: July 12, 2004.
TA–W–57,713; L.A. T Sportswear, LLC, Cutting Facility and Corporate Office, Ball Ground, GA: August 8, 2004.
TA–W–57,694; Cequent Consumer Products, a subsidiary of Trimas Corp., Sheffield, PA: August 3, 2004.
TA–W–57,676; Clayson Knitting Company, Inc., Red Springs, NC: August 1, 2004.
TA–W–57,669; Taymar Industries, Inc., Indio, CA: July 25, 2004.
TA–W–57,660; Coto Division of Kearney-National, Inc., d/b/a Coto Technology, a subsidiary of Dyson-Kessner-Moran Corp., including on-site leased workers of Talent Tree Staffing, Providence, RI: August 1, 2004.
TA–W–57,625; GST Autoleather, Williamsport, MD: July 26, 2004.
TA–W–57,615; Alfred Paquette, Div. of Byer California, Los Angeles, California: July 13, 2004.
TA–W–57,652; Fibrelume US, a subsidiary of Albert Smith Group, New Bedford, MA: July 29, 2004.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–57,577; Brunswick Family Boat Co., d/b/a U.S. Marine Bayliner, Pipestone, MN.
TA–W–55,180; Rainbow Swimwear, Inc., Brooklyn, NY.
TA–W–57,582; EPEC, LLC, New Bedford, MA.

TA–W–57,610; Gerdau Ameristeel, Beaumont Mill Div., workers' wage were reported under Cargill, Inc., Beaumont, TX
TA–W–57,694; Cequent Consumer Products, a Subsidiary of Trimas Corp., Sheffield, PA
TA–W–57,534; RAM Industries, LLC, Harnessing Department, including on-site leased workers of Gage Personnel Services, Contemporary @ Work Personnel Services, and Manpower Temporary Services, Leesport, PA

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–57,581; L&L Leather LLC, Brownsville, TX

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–57,519; Owens-Illinois Healthcare Packaging, a div. of The Owens-Illinois, Inc., Sullivan, IN
TA–W–57,449; Unicircuit-Roseville, Inc., a subsidiary of Unicircuit, Inc., Roseville, MN
TA–W–57,368; Holyoke Card Company, Inc., Springfield, MS
TA–W–57,443; Multitone Engraving Co., Inc., Rochelle Park, NJ
TA–W–57,560; Gross Given Manufacturing, Saint Paul, MN
TA–W–57,621; Abbott Laboratories, North Chicago Plant, Global Pharmaceuticals Operations, North Chicago, IL
TA–W–57,491; Iberia Sugar Cooperative, Inc., New Iberia, LA
TA–W–57,575; Milford Stitching Co., Inc., a div. of GLK, Inc., Milford, DE
TA–W–57,503; Office Equipment Services, Inc., Paw Paw, WV
TA–W–57,584; Credence Systems Corp., including on-site leased workers of HR Staffing, Acrotek, and Volt, Simi Valley, CA
TA–W–57,559; Alexander Fabrics, LLP, Burlington, NC
TA–W–57,568; Sam Moore Furniture Industries, a subsidiary of La-Z-Boy, Inc., Bedford, VA
TA–W–57,483; Bronze Craft Corp., Nashua, NH
TA–W–57,608; Accenture LLP, Houston, TX
TA–W–57,703; DPS Enterprises, Inc., Macon, GA
TA–W–57,534A; RAM Industries, LLC, PCB Department, including on-site leased workers of Gage Personnel Services, Contemporary @ Work Personnel Services, and Manpower Temporary Services, Leesport, PA
TA–W–57,739; Bon Worth, Inc., BonWorth Distribution Center, Hendersonville, NC
TA–W–57,552; Gas Transmission Service Co., LLC, a div. of The Transcanada Corp., Sandpoint, ID
TA–W–57,585; Delta Air Lines, Technical Operations, Atlanta, GA
TA–W–57,600; Philips Consumer Electronics, Philips Service Organization, Service Contracts Claims Credit and Special Project Departments, Knoxville, TN
TA–W–57,587; WTTC, Inc., El Paso, TX
TA–W–57,642; Andrews Center, Tyler, TX
TA–W–57,566; Household Shanghai Benefit Corp. (HSBC), Regional Processing Center, Pomona, CA
TA–W–57,658; Kellwood Company, Calhoun City, Mississippi Distribution Center, Calhoun City, MS
TA–W–57,697; Dorr-Oliver Eimco USA, Inc., Salt Lake City, UT
TA–W–57,475; Onux Medical, Inc., Hampton, NH

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–52,424; Emglo Products, LLC, a wholly owned subsidiary of Black & Decker (USA), Inc., including leased workers of Rom Ruggeri Enterprise (d/b/a Sherion), Johnstown, PA: July 29, 2002.
TA–W–57,554; Magnetics, a div. of Spang & Company, Booneville, AR:. January 8, 2005.
TA–W–57,495; VMC Volt Services Group, Workers at Hewlett-Packard Co., Imaging & Printing Group—Personal Inkjet Printing Div., Vancouver, WA: June 29, 2004.
TA–W–57,440; Trends Clothing, Inc., Miami, FL: November 9, 2004.
TA–57,459; Cardinal Brands, Inc., Hazel Promotional Products Div., Washington, MO: June 23, 2004.
TA–W–57,487; Continental Tire North America, Inc., a div. of Continental AG, Charlotte, NC: June 23, 2004.
TA–W–57,353 & A; Westpoint Home, Inc., formerly known as Westpoint Stevens, Inc., Bath Products Div., Wagram, NC and Bed Products Div., Calhoun Plant, Calhoun Falls, SC: June 8, 2004.
TA–W–57,407; Cativa, Inc., New York, NY: May 27, 2004.
TA–W–57,205; Royal Oak Enterprises, Inc., a div. of Royal Oak Sales, Inc., White City, OR: May 17, 2004.
TA–W–57,499; National Spinning Operations, LLC, Warsaw, NC: June 30, 2004.
TA–W–57,633; Corona Clipper, Inc., Corona, CA: July 19, 2004.
TA–W–57,626; Willowbrook Hosiery, Burlington, NC: July 26, 2004.
TA–W–57,580; Genlyte Group, Inc., Gardco Lighting Div., San Leandro, CA: July 6, 2004.
TA–W–57,535; Waytec Electronics Corp., Lynchburg, VA: July 11, 2004.
TA–W–57,593; Made in America, Inc., Waycross, GA: July 15, 2004.
TA–W–57,594; F & M Hat Co., Inc., Bierner Hat Co. Div., Dallas, TX: July 18, 2004.
TA–W–57,564; Bush Industries, Inc., Jamestown, NY: June 28, 2004.
TA–W–57,531; Agrium U.S., Inc., KFO Div., Kennewick, WA: June 27, 2004.
TA–W–57,524; USA Knit, Inc., Fort Payne, AL: July 7, 2004.
TA–W–57,369; U.S. Aluminum, Inc., Haskell, NJ: June 10, 2004.
TA–W–57,570; Acme-McCrary Corp., Silver City, NC: July 18, 2004.
TA–W–57,565; American Textile Marketing, Inc., Meritas Yarns Div., including leased on-site workers of Staffing Solutions, Columbus, GA: July 1, 2004.
TA–W–57,530; General Electric Consumer & Industrial Div., a subsidiary of General Electric Company, Jonesboro, AR: August 8, 2005.
TA–W–57,528; Tower Automotive, Inc., Granite City, IL: July 5, 2004.
TA–W–57,514; Painting Red Rhinos, Mechanicsburg, PA: July 5, 2004.
TA–W–57,496; Dukal Corp., formerly known as Hermitage Hospital Products, Niantic, CT: June 30, 2004.
TA–W–57,623; Lambert of Arkansas, Inc., Hughes, AR: July 25, 2004.
TA–W–57,520; Continental Tire North America, Inc. (CTNA), a subsidiary of Continental AG, Mayfield, KY: July 8, 2005.

TA–W–57,501; Unifi, Inc., Textured Div., Reidsville Plant #2, Reidsville, NC: July 11, 2004.

TA–W–57,479; Robert Bosch Tool Corp., Toccoa Div., Eastanollee, GA: June 24, 2004.

TA–W–57,466; Varco-Pruden Buildings, a subsidiary of Grupo IMSA, Memphis, TN: June 24, 2004.

TA–W–57,539; Robert Bosch North America, Automotive Technology—Chassis, including on-site leased workers of Staffmark, Securitas and Southern Universal, Gallatin, TN: July 12, 2004.

TA–W–57,506; Viskase Corp., Kentland, IN: June 28, 2004.

TA–W–57,455; Brand Mills, Ltd, Kaiboro Enterprises Corp., d/b/a Resource Payroll Co., Hackensack, NJ: June 10, 2004.

TA–W–57,390; Commemorative Brands, Inc., a div. of American Achievement Corp., El Paso, TX: June 13, 2004.

TA–W–57,622; K and K Framing, LLC, Booneville, MS: July 23, 2004.

TA–W–57,704; Sanmina-SCI Corp., Clinton, NC: August 4, 2004.

TA–W–57,612; Warvel Products, Inc., Transolid Div., Linwood, NC: July 19, 2004.

TA–W–57,544; Husky Injection Molding Systems, Inc., Controls Div., Milton, VT: July 12, 2004.

TA–W–57,713; L.A. T Sportswear, LLC, Cutting Facility and Corporate Office, Ball Ground, GA: August 8, 2004.

TA–W–57,676; Clayson Knitting Co., Inc., Red Springs, NC: August 1, 2004.

TA–W–57,660; Coto Division of Kearney-National, Inc., d/b/a Coto Technology, a subsidiary of Dyson-Kissner-Moran Corp., including on-site leased workers of Talent Tree Staffing, Providence, RI: August 1, 2004.

TA–W–57,625; GST Autoleather, Williamsport, MD: July 26, 2004.

I hereby certify that the aforementioned determinations were issued during the month of August 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 30, 2005.

Terrance Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4883 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,203]

Metalforming Technologies, Inc., Safety Systems Division, Including On-Site Leased Workers of Addeco, Burton, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Metalforming Technologies, Inc., Safety Systems Division, including on-site leased workers of Addeco, Burton, Michigan. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,203; Metalforming Technologies, Inc. Safety Systems Division, Including On-Site Leased Workers of Addeco, Burton, Michigan (August 26, 2005)

Signed at Washington, DC, this 31st day of August, 2005.

Terrance Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4879 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,321]

Reum Corporation, a Division of Reum Group, Waukegan, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Reum Corporation, a division of Reum Group, Waukegan, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,321; Reum Corporation, a division of Reum Group, Waukegan, Illinois (August 24, 2005)

Signed at Washington, DC, this 26th day of August, 2005.

Timothy Sullivan

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4882 Filed 9–7–05; 8:45 am]

BILLING CODE 4510–30–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–16]

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in FY 2006

AGENCY: Millennium Challenge Corporation.

SUMMARY: This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, 22 U.S.C.A. 7701, 7707(b) (the ''Act''). The Act authorizes the provision of Millennium Challenge Account (''MCA'') assistance to countries that enter into compacts with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (''MCC'') to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible for MCA assistance during Fiscal Year 2006. These steps include the submission of reports to the congressional committees specified in the Act and the publication of Notices in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance during Fiscal Year 2006 based on their per-capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for legal prohibitions on assistance (Section 608(a) of the Act);

2. The criteria and methodology that the Board of Directors of MCC (the ''Board'') will use to measure and evaluate the relative policy performance of the candidate countries consistent with the requirements of Section 607 of the Act in order to select ''eligible countries'' from among the ''candidate countries'' (Section 608(b) of the Act); and

3. The list of countries determined by the Board to be ''eligible countries'' for Fiscal Year 2006, including which of the eligible countries the Board will seek to

enter into MCA compacts (Section 608(d) of the Act).

This report sets out the criteria and methodology to be applied in determining eligibility for FY06 MCA assistance.

Changes to the Criteria and Methodology for FY 2006

MCC has received constructive input on the indicators since the announcement of FY05's selection criteria and methodology. That input has been taken into account in creating the criteria and methodology for the selection of eligible countries for FY06.

MCC has decided to make one change in the policy indicators for the FY06 selection process. In the FY05 Report, we signaled our intention to consider additional measures of government policies to encourage entrepreneurship and private sector ownership. For FY06, MCC will substitute an additional indicator from the World Bank Group's Doing Business report, Cost of Starting a Business, for a current indicator in this category, Country Credit Rating.

MCC believes there are potentially significant gains from adopting this additional measure of the entrepreneurial environment. The proposed indicator meets all of our criteria for an indicator, including a strong empirical relationship to growth. Moreover, we believe there are potentially significant gains in terms of country reforms from adopting another indicator from the Doing Business report because the indicators in it tend to be highly actionable. For example, we are currently using the Days to Start a Business indicator and have seen significant improvements in the median score for low income countries: from 62 days in 2002 to 45 days in 2005. According to the World Bank Group, 80% of the business start-up reforms that they have observed are directly attributable to the incentive effect of the MCA.

The strength of this new indicator is that countries can easily identify areas that require improvement and make quick administrative changes that produce immediate improvements. Governments can lower the cost of business start-up by creating single access points, making registration electronic, introducing temporary business licenses, eliminating statutory time limits and mandatory use of notaries and judges, standardizing paperwork, and eliminating non-essential fees, transfer taxes, stamp duties, as well as payments to property registries, notaries, public agencies and lawyers. In some cases a country can dramatically improve its score by simply reducing or eliminating notary fees that frequently are commensurate with the average citizen's annual income.

We are substituting Cost of Starting a Business for Country Credit Rating, a current indicator which we see as problematic. First, all of our indicators should be policy-linked and measure policies that a government can change. The existing literature on the determinants of country credit rating suggests that this metric is influenced not only by domestic policies (*e.g.*, inflation, reserve holdings, current account deficits, export growth, debt-GDP ratios, corruption, rule of law, and default risk) but also by many exogenous factors (*e.g.*, initial income, international interest rates, growth rates in industrialized nations, commodity price fluctuations, export composition). It is therefore not clear how quickly and to what degree domestic policy changes will affect this variable. In addition, this indicator appears to have more of an income bias than other indicators MCC is using.

Potential Future Changes Under Consideration: In addition to the change identified above, there are several potential future changes to the indicators that we will explore for the FY07 process. We are signaling these potential changes in order to solicit comments from the public and to provide countries an opportunity to evaluate their performance in these areas in advance of any such future changes in the selection process.

We hope that by highlighting our intention to look for better and more comprehensive indicators we will stimulate interest in improving the available data. In assessing new indicators, we will favor those that: (1) Are developed by an independent third party, (2) utilize objective and high-quality data, (3) are analytically rigorous and publicly available, (4) have broad country-coverage and are comparable across countries, (5) have a clear theoretical or empirical link to economic growth and poverty reduction, (6) are policy-linked, *i.e.* measure factors that governments can influence within a two to three year horizon, and (7) have broad consistency in results from year to year.

A summary of the results of research undertaken throughout the past year and the identification of potential future changes to the selection criteria and methodology follows:

Encouraging Economic Freedom: Trade Policy: In the FY05 Report, MCC signaled exploration of a more comprehensive measure of trade barriers. MCC has not identified a more comprehensive measure with good country coverage and which is publicly available and we will continue to research these issues for a possible change in FY07.

Natural Resources Management: MCC has launched a public process led by MCC Board Member Christine Todd Whitman in search of a natural resource management indicator. MCC has sought broad input from the academic community, public and private sector practitioners, and researchers at think tanks and NGOs. We have consulted with environmental experts from across the country, who have provided extremely valuable guidance to MCC, and have published a public ''request for ideas'' for an indicator or index. We have enlisted the help of six experts to individually rate proposals and submit independent evaluations to MCC, and will discuss with the Board later this year whether we have succeeded in identifying a potential indicator for FY07. In the interim, MCC will provide the Board with quantitative and qualitative supplemental information in the natural resource management area.

(Note: In FY05, we signaled MCC's intention to consider a reduction in the threshold on the Inflation indicator from 15% to 10% in FY06. However, we have not found credible evidence to support a further reduction, and MCC will continue to apply the 15% threshold.)

Investing in People: Women's and Children's Health: In FY05, MCC signaled an interest in finding additional ways to measure investments in people, particularly with respect to women and children, in accordance with the legislation. In particular, we singled out Skilled Attendants at Birth (SBA) (a proxy for maternal mortality which measures births attended by medically-trained midwives, nurses or doctors) for potential use in FY06. After extensively reviewing the data, the methodology, and the literature on skilled birth attendants, we cannot adopt this indicator for inclusion as an indicator in the FY06 selection process due to poor data quality and lack of adequate country coverage. We remain interested in identifying measures of government policies that support women's and children's health, however, and will look for improvements in country coverage, frequency, definitional consistency, and data quality in the SBA indicator. MCC will continue to explore additional and better ways to measure investments in people, particularly with respect to women and children, for use in the selection criteria in future years.

Criteria and Methodology

The Board will select eligible countries based on their overall performance in relation to their peers in three broad policy categories: Ruling Justly, Encouraging Economic Freedom, and Investing in People. Section 607 of the Act requires that the Board's determination of eligibility be based ''to the maximum extent possible, upon objective and quantifiable indicators of a country's demonstrated commitment'' to the criteria set out in the Act. For FY06, there will be two groups of candidate countries—low-income countries and lower-middle income countries. Low-income candidate countries refer to those countries that have a per capita income equal to or less than $1575 and are not ineligible to receive United States economic assistance under part I of the Foreign Assistance Act of 1961 by reason of the application of any provision of the Foreign Assistance Act or any other provision of law. Lower-middle income candidate countries are those that have a per capita income between $1,575–$3,255 and are not ineligible to receive United States economic assistance.

The Board will make use of sixteen indicators to assess policy performance of individual countries (specific definitions of the indicators and their sources are set out in Annex A). These indicators are grouped for purposes of the assessment methodology under the three policy categories as follows:

Ruling Justly:	Encouraging economic freedom:	Investing in people:
1. Civil Liberties	1. Cost of Starting a Business	1. Public Expenditures on Health as Percent of GDP.
2. Political Rights	2. 1-year Consumer Price Inflation	2. Immunization Rates: DPT3 and Measles.
3. Voice and Accountability	3. Fiscal Policy	3. Public Primary Education Spending as Percent of GDP.
4. Government Effectiveness	4. Trade Policy	4. Girls Primary Education Completion Rate.
5. Rule of Law	5. Regulatory Quality	
6. Control of Corruption	6. Days to Start a Business	

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether a country performs above the median in relation to its peers on at least half of the indicators in each of the three policy categories and above the median on the corruption indicator. One exception to this methodology is that the median is not used for the Inflation indicator. Instead, to pass the Inflation indicator a country's inflation rate needs to be under a fixed ceiling of 15%. The indicator methodology will be the predominant basis for determining which countries will be eligible for MCA assistance. In addition, the Board may exercise discretion in evaluating and translating the indicators into a final list of eligible countries. In this respect, the Board may also consider whether any adjustments should be made for data gaps, lags, trends, or other weaknesses in particular indicators. Likewise, the Board may deem a country ineligible if it performs substantially below the median on any indicator and has not taken appropriate measures to address this shortcoming.

Where necessary, the Board may also take into account other quantitative and qualitative information to determine whether a country performed satisfactorily in relation to its peers in a given category. As provided in the Act, the CEO's report to Congress setting out the list of eligible countries and identifying which of those countries the MCC will seek to enter into Compact negotiations with will include a justification for such eligibility determinations and selections for Compact negotiation.

There are elements of the criteria set out in the Act for which there is either limited quantitative information (*e.g.*, rights of people with disabilities) or no well-developed performance indicator (*e.g.*, sustainable management of natural resources). Until such data and/or indicators are developed, the Board may rely on supplemental data and qualitative information to assess policy performance. For example, the State Department Human Rights report contains qualitative information to make an assessment on a variety of criteria outlined by Congress, such as the rights of people with disabilities, the treatment of women and children, worker rights, and human rights. Similarly, as additional information in the area of corruption, the Board may consider how a country scores on Transparency International's Corruption Perceptions Index as well as on the defined indicator.

The Board's assessment of a country's commitment to economic policies that promote the sustainable management of natural resources may make use of quantitative and qualitative information such as access to sanitation, deforestation, conservation of land and marine resources, land tenure institutions, and protection of threatened and endangered species. MCC has launched a public process to identify a suitable potential indicator.

Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. As indicated above, a set of objective and quantifiable policy indicators is being used to establish eligibility for MCA assistance and measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the sixteen objective indicators. Most are addressed by multiple indicators. The specific indicators used to measure each of the criteria set out in the Act are as follows:

Section 607(b)(1:) Just and democratic governance, including a demonstrated commitment to—

(A) Promote political pluralism, equality, and the rule of law; Indicators—Political Rights, Civil Liberties, Voice and Accountability and Rule of Law

(B) Respect human and civil rights, including the rights of people with disabilities; Indicators—Political Rights and Civil Liberties

(C) Protect private property rights; Indicators—Civil Liberties, Regulatory Quality and Rule of Law

(D) Encourage transparency and accountability of government; and

Indicators—Political Rights, Civil Liberties, Voice and Accountability, and Government Effectiveness

(E) Combat corruption.

Indicators—Civil Liberties and Control of Corruption

Where necessary the Board will also draw on supplemental data and qualitative information, including the State Department's Human Rights Report and Transparency International Corruption Perception's Index.

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) Encourage citizens and firms to participate in global trade and international capital markets; Indicators—Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality

(B) Promote private sector growth and the sustainable management of natural resources; Indicators—Inflation, Days to Start a Business, Cost of Starting a Business, Fiscal Policy, and Regulatory Quality

(C) Strengthen market forces in the economy; and Indicators—Fiscal Policy, Inflation, and Regulatory Quality

(D) Respect worker rights, including the right to form labor unions. Indicators—Civil Liberties

Where necessary the Board will also draw on supplemental data and qualitative information including the State Department's Human Rights Report, access to sanitation, deforestation, conservation of land and marine resources, land tenure institutions, and protection of threatened and endangered species.

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) Promote broad-based primary education; and

Indicators—Girls' Primary Education Completion Rate and Public Spending on Primary Education.

(B) Strengthen and build capacity to provide quality public health and reduce child mortality. Indicators—Immunization and Public Spending on Health.

Annex A: Indicator Definitions

The following 16 indicators will be used to measure candidate countries' adherence to the criteria found in Section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather, they measure policies that are necessary conditions for a country to achieve broad-based sustainable economic growth. The indicators were selected based on their relationship to growth and poverty reduction, the number of countries they cover, their transparency and availability, and their relative soundness and objectivity. Where possible, the indicators rely on indices of performance developed by independent sources.

Ruling Justly

(1) *Civil Liberties:* A panel of independent experts rates countries on: freedom of expression, association and organizational rights, rule of law and human rights, and personal autonomy and economic rights. Source: Freedom House.

(2) *Political Rights:* A panel of independent experts rates countries on: the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups. Source: Freedom House.

(3) *Voice and Accountability:* An index of surveys that rates countries on: ability of institutions to protect civil liberties, the extent to which citizens of a country are able to participate in the selection of governments, and the independence of the media. Source: World Bank Institute.

(4) *Government Effectiveness:* An index of surveys that rates countries on: The quality of public service provision, civil services' competency and independence from political pressures, and the government's ability to plan and implement sound policies. Source: World Bank Institute.

(5) *Rule of Law:* An index of surveys that rates countries on: the extent to which the public has confidence in and abides by rules of society; incidence of violent and non-violent crime; effectiveness and predictability of the judiciary; and the enforceability of contracts. Source: World Bank Institute.

(6) *Control of Corruption:* An index of surveys that rates countries on: The frequency of ''additional payments to get things done,'' the effects of corruption on the business environment, ''grand corruption'' in the political arena and the tendency of elites to engage in ''state capture.'' Source: World Bank Institute.

Encouraging Economic Freedom

(1) *Cost of Starting a Business:* The Private Sector Advisory Service of the World Bank Group works with local lawyers and other professionals to examine specific regulations that impact business investment. One of their studies measures the cost of starting a new business as a percentage of per capita income. Source: World Bank Group.

(2) *Inflation:* The most recent 12 month change in consumer prices as reported in the IMF's International Financial Statistics or in another public forum by the relevant national monetary authorities. Source: Multiple.

(3) *Fiscal Policy:* The overall budget deficit divided by GDP, averaged over a three-year period. The data for this measure is being provided directly by the recipient government and will be cross checked with other sources and made publicly available to try to ensure consistency across countries. Source: National Governments and IMF WEO.

(4) *Days to Start a Business:* The Private Sector Advisory Service of the World Bank Group works with local lawyers and other professionals to examine specific regulations that impact business investment. One of their studies measures how many days it takes to open a new business. Source: World Bank Group.

(5) *Trade Policy:* A measure of a country's openness to international trade based on average tariff rates and non-tariff barriers to trade. Source: The Heritage Foundation's Index of Economic Freedom.

(6) *Regulatory Quality Rating:* An index of surveys that rates countries on: the burden of regulations on business, price controls, the government's role in the economy, foreign investment regulation and many other areas. Source: World Bank Institute.

Investing in People

(1) *Public Expenditure on Health:* Total expenditures by government at all levels on health divided by GDP. Source: National Governments.

(2) *Immunization:* The average of DPT3 and measles immunization rates for the most recent year available. Source: The World Health Organization WHO.

(3) *Total Public Expenditure on Primary Education:* Total expenditures by government at all levels of primary education divided by GDP. Source: National Governments.

(4) *Girls' Primary Completion Rate:* The number of female students completing primary education divided by the population in the relevant age cohort. Source: World Bank and UNESCO.

Dated: September 2, 2005.

Jon A. Dyck,

Vice President & General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–17793 Filed 9–7–05; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Meeting

AGENCY HOLDING MEETING: National Science Board; Audit and Oversight Committee.

DATE AND TIME: September 14, 2005, 11 a.m.–12 noon (e.t.).

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Public Meeting Room 220.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, September 14, 2005, Open Session.

Open Session (11 a.m. to 12 noon)

Discussion of Draft Report of NSB examination of the NSF Merit Review System.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–17948 Filed 9–6–05; 3:46 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Meeting

AGENCY HOLDING MEETING: National Science Board; Programs and Plans Committee.

DATE AND TIME: September 13, 2005, 11:30 a.m.–12:30 p.m. (e.t.).

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Public Meeting Room 110.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Tuesday, September 13, 2005, Open Session.

Open Session (11:30 a.m. to 12:30 p.m.)

- Review of NSF Draft Cyberinfrastructure Document.
- Open Discussion and Comments.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–17951 Filed 9–6–05; 3:46 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension*: Extension.

2. *The title of the information collection*: NRC Form 313, ''Application for Material License''; and NRC Form 313A, ''Training and Experience and Preceptor Statement.''

3. *The form number if applicable*: NRC Form 313 and NRC Form 313A.

4. *How often the collection is required*: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

5. *Who will be required or asked to report*: All applicants requesting a license for byproduct or source material.

6. *An estimate of the number of responses*: 3074 new, amendment, and renewal applications to NRC; 12,840 new, amendment, and renewal applications to Agreement States, for a total of 15,914 responses.

7. *The estimated number of annual respondents*: 15,914 (3,074 NRC licensees + 12,840 Agreement State licensees).

8. *An estimate of the number of hours needed annually to complete the requirement or request*: 70,022 (13,526 hours for NRC licensees and 56,496 hours for Agreement State licensees).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies*: Not applicable.

10. *Abstract*: Applicants must submit NRC Forms 313 and 313A to obtain a specific license to possess, use, or distribute byproduct or source material. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety, and minimize danger to life or property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC Home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 11, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John Asalone, Office of Information and Regulatory Affairs (3150–0120), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 1st day of September, 2005.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–4877 Filed 9–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7004]

USEC Inc.'s Proposed American Centrifuge Plant; Notice of Availability of Draft Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a Draft Environmental Impact Statement (DEIS) for the USEC Inc. (USEC) license application, dated August 23, 2004, for the possession and use of source, byproduct and special nuclear materials at its proposed American Centrifuge Plant (ACP) located near Piketon, Ohio.

The DEIS is being issued as part of the NRC's decision-making process on whether to issue a license to USEC, pursuant to Title 10 of the U.S. Code of Federal Regulations Parts 30, 40, and 70. The scope of activities conducted under the license would include the construction, operation, and decommissioning of the ACP. Specifically, USEC proposes to use gas centrifuge technology to enrich the uranium-235 isotope found in natural uranium up to 10-weight percent. The enriched uranium would be used to

manufacture nuclear fuel for commercial nuclear power reactors.

The NRC staff will hold a public meeting to present an overview of the DEIS and to accept oral and written public comments. The meeting date, time and location are listed below:

Meeting Date: Thursday, September 29, 2005.

Meeting Location: Vern Riffe Career Technology Center, 175 Beaver Creek Road, Piketon, OH 45661.

Informal Open House: 6–7 p.m.

DEIS Comment Meeting: 7–9:45 p.m.

Prior to the public meeting, the NRC staff will be available to informally discuss the proposed USEC project and answer questions in an ''open house'' format. This ''open house''' format provides for one-on-one discussions with the NRC staff involved with the preparation of the DEIS. The DEIS meeting officially begins at 7 p.m. and will include: (1) A presentation summarizing the contents of the DEIS and (2) an opportunity for interested government agencies, organizations, and individuals to provide comments on the DEIS. This portion of the meeting will be transcribed by a court reporter. Persons wishing to provide oral comments will be asked to register at the meeting entrance. Individual oral comments may have to be limited by the time available, depending upon the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to the attention of Mr. Matthew Blevins no later than September 22, 2005, to provide NRC staff with adequate notice to determine whether the request can be accommodated. Please note that comments do not have to be provided at the public meeting and may be submitted at any time throughout the comment period, through October 24, 2005, as described in the **DATES** and **ADDRESSES** sections of this notice.

DATES: The public comment period on the DEIS begins with publication of this notice and continues until October 24, 2005. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical. A public meeting to discuss the DEIS will be held on September 29 as described in the **SUMMARY** section of this notice.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–7004 when submitting comments. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by facsimile to (301) 415–5397, Attention: Mr. Matthew Blevins.

FOR FURTHER INFORMATION CONTACT: For questions related to the safety review or overall licensing of the USEC facility, please contact Mr. Yawar Faraz at at (301) 415–8113. For environmental review questions, please contact Mr. Matthew Blevins at (301) 415–7684.

The DEIS may be accessed on the Internet at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1834.'' Additionally, the NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The DEIS and its appendices may also be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

The DEIS is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the DEIS can be obtained for a fee by writing to the Office of Information Services, Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by electronic mail at *DISTRIBUTION@nrc.gov*; or by fax at (301) 415–2289.

A selected group of documents associated with the USEC facility may also be obtained from the Internet on NRC's USEC Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/usecfacility.html*. In addition, all comments of Federal, State and local agencies, Indian tribes or other interested persons will be made available for public inspection when received.

SUPPLEMENTARY INFORMATION: This DEIS was prepared in response to an application submitted by USEC dated August 23, 2004, for the possession and use of source, byproduct and special nuclear materials at its proposed ACP located near Piketon, Ohio. The DEIS for the proposed ACP was prepared by the NRC staff and its contractor, ICF Consulting, Inc., in compliance with the National Environmental Policy Act (NEPA) and the NRC's regulations for implementing NEPA (10 CFR Part 51).

The DEIS is being issued as part of the NRC's decision-making process on whether to issue a license to USEC, pursuant to Title 10 of the U.S. Code of Federal Regulations Parts 30, 40, and 70. The scope of activities conducted under the license would include the construction, operation, and decommissioning of the ACP. Specifically, USEC proposes to use gas centrifuge technology to enrich the uranium-235 isotope found in natural uranium up to 10-weight percent. The enriched uranium would be used to manufacture nuclear fuel for commercial nuclear power reactors. USEC proposes to locate the ACP in leased portions of the U.S. Department of Energy (DOE) reservation in Piketon, OH. This is the same site as DOE's Portsmouth Gaseous Diffusion Plant. The ACP would consist of refurbished existing facilities and newly constructed facilities, primarily located in the southwestern portion of the central DOE reservation.

The NRC staff published a Notice of Intent to prepare an EIS for the proposed ACP and to conduct a scoping process, in the **Federal Register** on October 15, 2004 (69 FR 61268). The NRC staff accepted comments through February 1, 2005, and subsequently issued a Scoping Summary Report in April 2005 (ADAMS Accession Number: ML050820008). The DEIS describes the proposed action and alternatives to the proposed action, including the no-action alternative. The NRC staff assesses the impacts of the proposed action and its alternatives on public and occupational health, air quality, water resources, waste management, geology and soils, noise, ecology resources, land use, transportation, historical and cultural resources, visual and scenic resources, socioeconomics, accidents and environmental justice. Additionally, the DEIS analyzes and compares the costs and benefits of the proposed action.

Based on the preliminary evaluation in the DEIS, the NRC environmental review staff has concluded that the proposed action would have small effects on the physical environment and human communities with the exception of: (1) Short-term moderate impacts associated with increases in particulate matter released to the air during the construction phase, (2) short-term moderate impacts related to increased

traffic congestion during the construction phase, (3) potential moderate impacts due to transportation accidents, (4) potential moderate impacts from facility operation accidents, (5) moderate impacts associated with a potential operating extension of the DOE depleted uranium tails conversion facility, and (6) moderate employment impacts on the local communities associated with the construction and operation phases.

After weighing the impacts, costs, and benefits of the proposed action and comparing alternatives, the NRC staff, in accordance with 10 CFR 51.71(e), set forth their preliminary recommendation regarding the proposed action. The NRC staff recommend that, unless safety issues mandate otherwise, the action called for is the approval of the proposed action (*i.e.*, issue a license). The DEIS is a preliminary analysis of the environmental impacts of the proposed action and its alternatives. The Final EIS and any decision documentation regarding the proposed action will not be issued until public comments on the DEIS have been received and evaluated. Notice of the availability of the Final EIS will be published in the **Federal Register**.

The NRC staff in the Division of Fuel Cycle Safety and Safeguards are currently completing the safety review for USEC's license application and is currently scheduled for completion in the Spring of 2006.

Dated at Rockville, Maryland, this 30th day of August, 2005.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Deputy Director, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4878 Filed 9–7–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal advisory committee meetings.

SUMMARY: The Office of Management and Budget announces a meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: The public meeting of the Panel will be held on September 27, 2005, beginning at 9 a.m. Eastern Time and ending no later than 5 p.m.

ADDRESSES: The public meeting will be held at the Federal Deposit Insurance Corporation (FDIC), Basement auditorium, 801 17th Street NW., Washington, DC 20434. The public is asked to pre-register one week in advance of the meeting due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning the meeting or the Acquisition Advisory Panel itself, or to pre-register for the meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time should refer to the instructions in paragraph (c) below, *Oral Public Comments.*

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for oral public comments will be provided at this meeting. See paragraph (c) below for instructions on presenting oral public comments. Time for oral public comments is expected at future public meetings as well and will be announced in the **Federal Register**.

September 27, 2005 Meeting—The working groups, established at previous public meetings of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will report on their first drafts of background statements. The Panel also expects to hear from additional invited speakers from the public and private sectors who will address issues related to the Panel's statutory charter, including commercial practices and performance-based contracting as well as interagency contracting.

(b) *Availability of Materials for the Meetings:* Please see the Acquisition Advisory Panel Web site for any available materials, including draft agendas, for these meetings (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel. The public may also obtain copies of Initial Working Group Reports presented at the March 30, 2005 public meeting and the follow-up scope reports presented at the June 14, 2005 public meeting at the Panel's Web site under ''Meeting Materials'' at this Web site. Minutes for each meeting are also posted.

(c) *Procedures for Providing Public Comments:* It is the policy of the Acquisition Advisory Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. To facilitate Panel discussions at its meetings, the Panel may not accept oral comments at all meetings. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously presented oral comments, and that comments will be relevant to the issues under discussion.

Oral Public Comments: One hour has been reserved for oral public comments at this meeting. Speaking times will be confirmed by Panel staff on a ''first-come/first-serve'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Ms. Pamela Gouldsberry, AAP Senior Staff Analyst, in writing at: *pamela.gouldsberry@gsa.gov,* by FAX at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting in order to be placed on the public speaker list. Verbal requests for speaking time will not be taken. Speakers are requested to

bring extra copies of their comments and presentation slides, if used, for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Gouldsberry one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). **Please note:** The Panel operates under the provisions of the Federal Advisory Committee Act, as amended, therefore, all public presentations and written statements will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(d) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 05–17841 Filed 9–7–05; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27054; 812–12926]

Fifth Third Funds, et al.; Notice of Application

September 1, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Fifth Third Funds and Variable Insurance Funds (each, a ''Trust,'' and together, the ''Trusts''), and Fifth Third Asset Management Inc. (''FTAM'').

FILING DATES: The application was filed on February 5, 2003, and amended on August 16, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 27, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, c/o Alan G. Priest, Esq., Ropes & Gray LLP, One Metro Center, 700 12th Street, NW., Washington, DC 20005–3948.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 551–6874, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Trust currently offers multiple series (each, a ''Fund''), each with its own investment objectives, restrictions, and policies. Certain of the Funds use or may use the multi-manager structure described below (each, a ''Multi-Manager Fund,'' and together, the ''Multi-Manager Funds''). FTAM is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to all of the Funds.[1] Each Trust, on behalf of its Funds, has entered into an investment advisory agreement with FTAM (each an ''Advisory Agreement'' and collectively, the ''Advisory Agreements''). The Advisory Agreements have been approved by each Trust's board of trustees (each, a ''Board,'' and together, the ''Boards''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trusts (''Independent Trustees''), as well as by each applicable Fund's shareholders.[2]

2. Under the terms of the Advisory Agreements, FTAM oversees each Multi-Manager Fund's investments and may select and contract with one or more sub-advisors (''Sub-Advisors'') to exercise day-to-day investment discretion over all or a portion of the assets of a Multi-Manager Fund pursuant to a separate investment sub-advisory agreement. FTAM monitors and evaluates the Sub-Advisors and recommends to the Board their hiring, retention or termination. Sub-Advisors must be approved by a Multi-Manager Fund's Board and by shareholders, and may be terminated by the Board or the shareholders. Each Sub-Advisor is or will be registered under the Advisers Act. Each Sub-Advisor's fee is paid by FTAM out of the management fee received by FTAM from the Multi-Manager Funds.

3. Applicants request relief to permit FTAM, subject to Board approval, to enter into and materially amend sub-advisory agreements without shareholder approval. The requested relief will not extend to a Sub-Advisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Multi-Manager Fund or FTAM, other than by reason of serving as a Sub-Advisor to one or more of the Multi-Manager Fund (''Affiliated Sub-Advisor'').

[1] Applicants also request that any relief granted pursuant to the application extend to any other existing or future registered open-end management investment company or series therof that: (i) Is advised by FTAM or any entity controlling, controlled by, or under common control with FTAM and (ii) uses the multi-manager structure described in the application (''Future Funds,'' included in the term ''Multi-Manager Funds''). Any Fund or Future Fund that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. The Trusts are the only existing investment companies that currently intend to rely on the order. If the name of any Multi-Manager Fund contains the name of a Sub-Advisor (as defined below), it will be preceded by FTAM's name.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unit holders of any separate account for which a series of the Variable Insurance Funds serves as a funding medium.

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Multi-Manager Funds to disclose the fees paid by FTAM to the Sub-Advisors. An exemption is requested to permit a Multi-Manager Fund to disclose (as both a dollar amount and as a percentage of its net assets): (a) The aggregate fees paid to FTAM and any Affiliated Sub-Advisor, and (b) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (collectively, ''Aggregate Fees''). If a Multi-Manager Fund employs an Affiliated Sub-Advisor, the Multi-Manager Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Advisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisors.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Multi-Manager Fund, shareholders, in effect, will hire FTAM to manage the Multi-Manager Fund's assets by using its investment advisor selection and monitoring process. Applicants assert that investors will purchase Multi-Manager Fund shares to gain access to FTAM's expertise in these areas. Applicants further assert that the requested relief will reduce Multi-Manager Fund expenses and enable the Multi-Manager Funds to operate more efficiently. Applicants note that the Multi-Manager Funds' Advisory Agreements will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Sub-Advisors charge their customers for advisory services according to a ''posted'' fee schedule. Applicants state that while Sub-Advisors are willing to negotiate fees lower than those posted in the rate schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisors to negotiate lower advisory fees with FTAM, the benefits of which may be passed on to Multi-Manager Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Multi-Manager Fund may rely on the requested order, the operation of the Multi-Manager Fund in the manner described in the application will be approved by a majority of the Multi-Manager Fund's outstanding voting securities, as defined in the Act, or, in the case of a Multi-Manager Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder prior to offering shares of the Multi-Manager Fund to the public.

2. Each Multi-Manager Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Multi-Manager Fund will hold itself out to the public as employing the ''manager of managers'' approach described in the application. The prospectus will prominently disclose that FTAM has ultimate responsibility (subject to oversight by the Board) for the investment performance of a Multi-Manager Fund due to its responsibility to oversee Sub-Advisors and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Sub-Advisor, FTAM will furnish shareholders of the affected Multi-Manager Fund with all of the information about the new Sub-Advisor that would be contained in a proxy statement, except as modified by the order to permit the disclosure of Aggregate Fees. This information will include the disclosure of Aggregate Fees and any change in such disclosure caused by the addition of a new Sub-Advisor. FTAM will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit the disclosure of Aggregate Fees.

4. FTAM will not enter into a sub-advisory agreement with any Affiliated Sub-Advisor without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Multi-Manager Fund.

5. Each Fund will comply with the fund governance standards as defined in rule 0–1(a)(7) under the Act by the compliance date for the rule. Prior to the compliance date, a majority of each Board will be Independent Trustees and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Advisor is proposed for a Multi-Manager Fund with an Affiliated Sub-Advisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Multi-Manager Fund and its shareholders and does not involve a conflict of interest from which FTAM or

the Affiliated Sub-Advisor derives an inappropriate advantage.

7. FTAM will provide general management services to each Multi-Manager Fund, and, subject to review and approval by the Board, will: (a) Set each Multi-Manager Fund's overall investment strategies, (b) evaluate, select and recommend Sub-Advisors to manage all or a part of a Multi-Manager Fund's assets, (c) when appropriate, allocate and reallocate the Multi-Manager Fund's assets among multiple Sub-Advisors, (d) monitor and evaluate the Sub-Advisors' investment performance, and (e) implement procedures reasonably designed to ensure that the Sub-Advisors comply with the Multi-Manager Fund's investment objectives, policies and restrictions.

8. No trustee or officer of a Multi-Manager Fund, or director or officer of FTAM will own, directly or indirectly (other than through a pooled investment vehicle over which such person does not have control), any interest in a Sub-Advisor, except for: (a) Ownership of interests in FTAM or any entity that controls, is controlled by, or is under common control with FTAM, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by, or is under common control with a Sub-Advisor.

9. Each Multi-Manager Fund will disclose in its registration statement the Aggregate Fees.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. FTAM will provide the Board, no less frequently than quarterly, with information about FTAM's profitability on a per-Multi-Manager Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

12. Whenever a Sub-Advisor is hired or terminated, FTAM will provide the Board with information showing the expected impact on FTAM's profitability.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4886 Filed 9–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52367; File No. SR–CBOE–2004–86]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to the Modified ROS Opening Procedure

August 31, 2005.

I. Introduction

On December 15, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend the Exchange's Rapid Opening System (''ROS'') [3] modified opening procedure set forth in CBOE Rule 6.2A.03. On July 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change was published for comment in the **Federal Register** on July 28, 2005.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Current CBOE Rule 6.2A.03 sets forth certain procedures that modify the normal operation of ROS for index options with respect to which volatility indexes are calculated, to be utilized on the final settlement date (''Settlement Date'') of futures and options contracts that are traded on the applicable volatility index.[6] Specifically, the modified ROS opening procedure provides that on such Settlement Date, all orders, other than contingency orders, are eligible to be placed on the book in those index option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purposes of permitting those orders to participate in the ROS opening price calculation for the applicable index option series.[7]

In setting forth the purpose of the proposed rule change, CBOE cites the example of market participants actively trading futures on the CBOE Volatility Index (''VIX futures''), who have utilized the modified ROS opening procedure to place orders for options on the S&P 500 Index (''SPX'') on the book on the Settlement Date of the VIX futures contract to unwind hedge strategies involving SPX options that were initially entered into upon the purchase or sale of the futures.[8] According to CBOE, to the extent that (i) traders who are liquidating hedges predominately are on one side of the market and (ii) those traders' orders predominate over other orders during the SPX opening on Settlement Date, trades to liquidate hedges may contribute to an order imbalance during the SPX opening on Settlement Date.

CBOE proposes to implement changes to the modified ROS opening procedure to encourage additional participation by market participants who may wish to place off-setting orders against the imbalances. Currently, all orders for participation in the modified procedure must be received by 8:28 a.m. (CT).[9] The proposed rule change would amend Rule 6.2A.03 to require that all index option orders for participation in the modified ROS opening that are related to positions in, or a trading strategy involving, volatility index options or futures, and any changes or cancellations to these orders, be received prior to 8 a.m. (CT).[10] In addition, the proposed rule would require information regarding any order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ROS is the Exchange's automated system for opening certain classes of options at the beginning of the trading day or for re-opening those classes of options during the trading day.

[4] *See* Form 19b–4, dated July 1, 2005 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

[5] *See* Securities Exchange Act Release No. 52101 (July 21, 2005), 70 FR 43726 (''Notice'').

[6] The final settlement date of futures and options contracts on volatility indexes occurs on the Wednesday that is immediately prior to the third Friday of the month that immediately precedes the month in which the options used in the calculation of that index expire.

[7] *See* CBOE Rule 6.2A.03. *See also* Securities Exchange Act Release Nos. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004); and 49798 (June 3, 2004), 69 FR 32644 (June 10, 2004).

[8] *See* Notice. In particular, CBOE states, the commonly-used hedge for VIX futures involves holding a portfolio of the SPX options that will be used to calculate the settlement value of the VIX futures contract on the Settlement Date. Traders holding hedged VIX futures positions to settlement can be expected to trade out of their SPX options on the Settlement Date. *Id.*

[9] *See* current CBOE Rule 6.2A.03(v).

[10] The proposed rule change includes provisions setting forth generally the criteria by which the Exchange would consider index options orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of the rule. *See* Notice.

imbalances to be published as soon as practicable after 8 a.m. (CT), and thereafter at approximately 8:20 a.m. (CT), on the Settlement Date.[11]

The proposed rule change also provides a limited exception that would permit cancellations and changes to booked orders falling under this provision that are made to correct a legitimate error. The member submitting the change or cancellation would be required to prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and would be required to file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange. In addition, two Floor Officials would have the ability to suspend the new rule in the event of unusual market conditions.[12]

The Exchange also proposes (i) to move the cut-off time for the submission of all other index option orders for participation in the modified ROS opening on Settlement Date mornings from 8:28 a.m. (CT) to 8:25 a.m. (CT); (ii) to change the time standards reflected in the rule from CST to CT, since Chicago is in the Central Time zone; and (iii) to revise the rule language in current CBOE Rule 6.2A.03(viii) to reflect that the Exchange has recently implemented a systems change to ROS that automatically generates cancellation orders for Exchange market-maker, away market-maker, specialist, and broker-dealer orders which remain on the electronic book following the modified ROS opening procedure.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.[13] In particular, the Commission believes that the proposed rule change is consistent with the requirements on Section 6(b)(5) of the Act[14] that the rules of a national securities exchange, in part, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will improve the modified ROS opening procedure by exposing for a longer period of time order imbalances in index options resulting from the unwinding of hedged volatility index future positions. The Exchange further believes that the market participants to whom the proposed rule change applies would not be materially affected by the 8 a.m. (CT) cut-off time, because the last day of trading in volatility index futures in the applicable expiring month occurs on the day before Settlement Date, and holders of open volatility index futures are generally aware before 8 a.m. (CT) of the related index options series that they need to place on the book in order to adequately unwind their hedges. The Commission believes that the proposed rule change may serve the intended benefit without imposing an undue burden on these participants. The Commission notes that it has approved a similar rule in another context.[15]

The proposed rule change would also modify the deadline for submitting all other index options orders for participation in the modified ROS opening procedure, and any changes to or cancellations of any orders, from 8:28 a.m. (CT) to 8:25 a.m. (CT). The Exchange believes that this rule change would give Lead Market-Makers on the CBOE additional time to review order imbalances on the book in order to setting the Autoquote values that are used in the modified ROS opening procedures. The Commission believes this proposed adjustment is reasonable to achieve the intended benefit.

The Commission further believes that the other associated aspects of the proposed rule change are appropriate to clarify the application of the rule and to provide for its reasonable implementation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–2004–86), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4875 Filed 9–7–05; 8:45 am]

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[11] The Exchange represents that it would publish the imbalance on its Web site. *See* Notice.

[12] For example, the CBOE states that if a significant market event occurs between 8:00 a.m. (CT) and 8:25 a.m. (CT), Floor Officials may determine to suspend the rule provision in the interest of maintaining a fair and orderly market so that limit orders placed in the book to unwind hedged volatility index futures positions are not unfairly disadvantaged as a result of a significant market move that would result in limit orders going unexecuted.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* NYSE Rule 123C(6). *See, e.g.*, Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474 (June 22, 1988) (order approving File Nos. SR–NYSE–87–11 and 88–04).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52374; File No. SR–CBOE–2005–66]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Pilot Programs Applicable to Fee Caps for Dividend Spread and Merger Spread Transactions Until March 1, 2006

September 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Exchange designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to extend until March 1, 2006 the pilot programs applicable to fee caps on dividend spread and merger spread transactions. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii)

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with ''dividend spread'' transactions [5] at $2,000 for all dividend spread transactions executed on the same trading day in the same options class. A similar fee cap is currently in place for market-maker, firm, and broker-dealer transaction fees associated with ''merger spread'' transactions [6] executed on the same trading day in the same options class.[7] Both fee caps are in effect as pilot programs that are due to expire on September 1, 2005.[8]

The Exchange proposes to extend both pilot programs until March 1, 2006. No other changes are proposed. The Exchange believes that extension of these fee cap programs should attract additional liquidity and permit the Exchange to remain competitive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f)(2) of Rule 19b–4 thereunder [12] because it is establishing or changing a due, fee, or other charge applicable only to the Exchange's members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–66 and should be submitted on or before September 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4885 Filed 9–7–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52364; File No. SR–ISE–2005–41]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Price Improvement Mechanism

August 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange

[5] A ''dividend spread'' is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

[6] A ''merger spread'' transaction is defined as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

[7] Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE, and Steve Kuan, Special Counsel, Division of Market Regulation, Commission, on August 30, 2005.

[8] *See* Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005) (SR–CBOE–2005–18), and 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005) (SR–CBOE–2005–42).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The Exchange filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add an order type called the Customer Participation Order, which can be used by public customers to participate in the Price Improvement Mechanism (''PIM''). Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Rule 715.

(a) through (e) no change.

(f) *Customer Participation Orders. A Customer Participation Order (''CPO'') is a limit order on behalf of a Public Customer that, in addition to the limit order price in standard increments according to Rule 710, includes a price stated in one-cent increments (the ''Participation Interest'') at which the Public Customer wishes to participate in trades executed in the same options series in penny increments through the Price Improvement Mechanism pursuant to Rule 723. The Participation Interest price must be higher than the limit order price in the case of a CPO to buy, and lower than the limit order price in the case of a CPO to sell. The size of the order will be automatically decremented when the Public Customer participates in the execution of an order at the Participation Interest price.*

* * * * *

Rule 723. Price Improvement Mechanism for Crossing Transactions

(a) through (c) no change.

(d). Execution. At the end of the exposure period the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange's market, Improvement Orders*, Customer Participation Orders (see Supplementary Material .06 below)* and the Counter-Side Order. The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price.

(d)(1) through (d)(6) no change.

Supplementary Material to Rule 723

.01 through .05 no change.

.06. *Pursuant to Rule 723(c)(2), Electronic Access Members may enter Improvement Orders for the account of Public Customers. Without limiting the forgoing, Electronic Access Members may enter Improvement Orders with respect to CPOs (as defined in Rule 715(f)). An Improvement Order can be entered with respect to a CPO if: (1) the limit order price of the CPO is equal to the best bid or offer on the Exchange at the time the PIM is initiated; and (2) the CPO is on the same side of the market as the Counter-Side Order. The Improvement Order must be entered for the existing size of the limit order up to the size of the Agency Order and for the price of the Participation Interest.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The PIM is a process by which crossing transactions may be exposed to the market for price improvement. Under ISE Rule 723, upon the entry of a Crossing Transaction, a broadcast message is sent to all Members, which then have three seconds to enter Improvement Orders that indicate the size and price at which they want to participate in the execution. Improvement Orders may be entered by all Members for their own account or for the account of a Public Customer in one-cent increments. ISE Rule 723 does not limit the circumstances in which Electronic Access Members may enter Improvement Orders on behalf of Public Customers.

The Exchange proposes to implement an additional order type that will facilitate the ability of Members to participate in trades in penny increments through the PIM, and to amend ISE Rule 723 to specify that Members may enter Improvement Orders on behalf of Public Customers that utilize the new order type. This additional functionality is purely voluntary, and merely supplements the open access currently provided in ISE Rule 723. The Exchange believes that some Members may wish to provide PIM access to Public Customers in this particular manner.[4]

The Exchange proposes to define a Customer Participation Order (''CPO'') in ISE Rule 715 as a limit order on behalf of a Public Customer that, in addition to the limit order price in standard trading increments, includes a price stated in one-cent increments (the ''Participation Interest'') at which the Public Customer wishes to participate in trades in the same options series in penny increments through the PIM. The Participation Interest price must be higher than the limit order price in the case of a CPO to buy, and lower than the limit order price in the case of a CPO to sell. The Exchange also proposes to amend ISE Rule 723 to specify that an Electronic Access Member may enter an Improvement Order with respect to a CPO if: (1) The limit order price is equal to the best bid or offer on the Exchange at the time the PIM is initiated; and (2) the CPO is on the same side of the market as the Counter-Side Order.

The CPO is an instruction to the member to enter an Improvement Order on behalf of the Public Customer at a particular price and size. The Improvement Order must be entered for the existing size of the limit order up to the size of the Agency Order being executed through the PIM, and for the price of the Participation Interest. The CPO does not give the member discretion to enter an Improvement Order at any lesser size or price, nor to modify the price or size of the Improvement Order once it is entered. The size of the CPO will be automatically decremented by the execution of a related Improvement Order.

2. Statutory Basis

According to the ISE, the basis under the Act for this proposed rule change is found in Section 6(b)(5) of the Act,[5] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the

[3] 17 CFR 240.19b–4(f)(6).

[4] The Boston Options Exchange facility (''BOX'') of the Boston Stock Exchange, Inc. (''BSE'') provides access to its price improvement process through the use of a similar order type. *See* Chapter V, Section 18(g) of the BOX Rules.

[5] 15 U.S.C. 78f(b)(5).

public interest. The Exchange believes that the additional functionality will increase the ability for Electronic Access Members to participate in the PIM on behalf of Public Customers. Accordingly, the proposed rule change could result in greater participation in PIM executions by Public Customers and greater opportunity for price improvement for the orders being executed through the PIM.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] As required under Rule 19b–4(f)(6)(iii),[8] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6)(iii) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to implement the proposal as quickly as possible. In addition, the Commission notes that the BSE uses an order type that is substantially similar to the ISE's proposed CPO.[11] The Commission does not believe that the proposed rule change raises new regulatory issues. For the reasons stated above, the Commission designates the proposal to become operative immediately.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–ISE–2005–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–41 and should be submitted on or before September 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4873 Filed 9–7–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] *Id.*

[11] *See* Chapter V, Section 18(g) of the BOX Rules (describing the Price Improvement Period (''PIP'') and the operation of the BOX Customer PIP Order). *See also* Securities Exchange Act Release No. 51651 (May 3, 2005), 70 FR 24848 (May 11, 2005) (order approving SR–BSE–2005–01).

[12] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52372; File No. SR–NASD–2005–104]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend on a Pilot Basis Rules Concerning Bond Mutual Fund Volatility Ratings

August 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed the proposal as a ''non-controversial'' rule change pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend on a pilot basis the provisions of NASD Rule 2210(c)(3) and Interpretive Material 2210–5 concerning bond mutual fund volatility ratings (collectively, the ''Rules'') until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM–2210–5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(This rule and Rule 2210(c)(3) will expire on [August 31] *December 29*, 2005, unless extended or permanently approved by NASD at or before such date.)

(a) through (c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of the NASD's Rules on Bond Mutual Fund Volatility Ratings. On February 29, 2000, the SEC approved the adoption of NASD Interpretive Material 2210–5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).[5] At that time, the SEC also approved NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. IM–2210–5 and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.[6] On August 10, 2001, NASD filed with the Commission a proposed rule change that was effective upon filing that extended the effectiveness of IM–2210–5 and Rule 2210(c)(3) an additional two years until August 31, 2003.[7] On August 7, 2003, NASD filed a similar proposed rule change with the Commission that was effective upon filing and that extended the effectiveness of IM–2210–5 and Rule 2210(c)(3) until August 31, 2005.[8] Prior to the pilot, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material. Under the pilot, IM–2210–5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met, including that:

- The word ''risk'' may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide detailed disclosure on its rating methodology to investors through a toll-free telephone number, a Web site, or both.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Advertising Regulation Department of NASD (''Department'') at least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

Proposed Rule Change to Extend IM–2110–5 and Rule 2210(c)(3) for 120 Days. NASD intends shortly to submit to the Commission a proposed rule change to make the Rules effective on a permanent basis. However, the process to obtain Commission approval, including publication of the proposal for comment in the **Federal Register** and responding to any comments received, will extend beyond the expiration of the current pilot on August 31, 2005. Therefore, to maintain operation of the pilot pending the approval process of the Rules on a permanent basis, NASD is proposing to extend the pilot for 120 days until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

The proposed rule change will become effective upon filing, will be implemented at the close of business, August 31, 2005, and will expire on December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that extending the effectiveness of IM–2210–5 and Rule 2210(c)(3) for 120 days unless the Rules are extended or approved on a permanent basis before that date will allow members to publish sales material that contains bond fund volatility ratings during this interim period in a manner that will protect investors and serve the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR–NASD–2001–49); NASD Notice to Members 01–58 (September 2001).

[8] *See* Securities Exchange Act Release No. 48353 (August 15, 2003); 68 FR 50568 (August 21, 2003) (SR–NASD–2003–126); NASD Notice to Members 03–48 (August 2003).

[9] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate.[12]

NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing so that NASD can begin implementation of this proposed rule change as of the close of business on August 31, 2005, in order to prevent the current pilot Rules from lapsing. The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change would prevent the current pilot Rules from lapsing while the permanent adoption of the Rules is under consideration.

At any given time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–104 and should be submitted on or before September 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4874 Filed 9–7–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52373; File No. SR–PCX–2005–99]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Approval of Proposed Rule Changes Relating to Direct Communication Between Parties and Arbitrators

September 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2005, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PCX has designated this proposal as ''non-controversial'' pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective immediately upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend the PCX Options and PCX Equities, Inc. arbitration rules to permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication. The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes a rule that would permit direct communication with the arbitrators where all parties and arbitrators agree. The rule would also establish guidelines for direct communication.

Under normal procedures, parties may exchange certain documents among themselves (such as those relating to discovery), but must address all communications intended for the arbitrators to PCX staff, who then forward the communications to the arbitrators. If the communication includes a motion or similar request, staff members customarily solicit a response from the other parties before forwarding the motion or request. Similarly, the arbitrators transmit their orders and any other communications through PCX staff.

The proposed rule is based on the rules of the National Association of Securities Dealers, Inc. (''NASD'').[5] Only parties that are represented by counsel may use direct communication under the proposed rule. If, during the proceeding, a party choses to appear pro se (without counsel), the rule will no longer apply. All arbitrators and all parties must agree to the use of direct communication before it can be used. The scope of direct communication will be set forth in an arbitrator order, and parties may send the arbitrators only the types of items that are listed in the order.

The proposed rule provides that either an arbitrator or a party may rescind his or her agreement at any time if direct communication is no longer working well. Materials must be sent at the same time and in the same manner to all parties and the Director of Arbitration (the ''Director'') (through an assigned staff member), and staff must receive copies of any orders and decisions made as a result of direct communication among the parties and the arbitrators. As requested by staff, however, the rule contains a provision stating that materials more than 15 pages long shall be sent to the Director only by regular mail or overnight courier, to avoid tying up busy fax machines and printers. Arbitrators (or parties) with similar concerns could include a similar provision as to themselves in the direct communication order. PCX will prepare a template for direct communication orders to guide the arbitrators and parties in considering these issues.

2. Statutory Basis

For the above reasons, the PCX believes that the proposed rule would enhance competition. The PCX believes that the proposed rule is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition and to protect investors and the public interest. The PCX believes that permitting direct communication with the arbitrators where all parties agree, and where specific guidelines are followed, will protect investors and the public interest by expediting the arbitration process and giving parties more control over their arbitration cases.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b–4(f)(6)(iii),[10] the PCX provided the Commission with written notice of PCX's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative for 30 days after the date of its filing.[11] However Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Accelerating the operative date will allow for a more efficient and effective market operation by enabling the PCX to provide an arbitration forum that is as efficient and effective as arbitration forums offered at other self regulatory organizations. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

[5] *See* NASD Rule 10334.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] *Id.*

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–99 and should be submitted on or before September 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4876 Filed 9–7–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4709]

Renewal of the Charter of the Advisory Committee on Cultural Diplomacy

Summary: The Department of State announces that the charter of the Advisory Committee on Cultural Diplomacy has been renewed for an additional two-year period, to expire on August 31, 2007.

The Department of State announces that the charter of the Advisory Committee on Cultural Diplomacy, established under Public Law 107–228, section 224, has been renewed for an additional two-year period. The charter will now expire on August 31, 2007.

The Advisory Committee on Cultural Diplomacy was established to ''advise the Secretary on programs and policies to advance the use of cultural diplomacy in United States foreign policy.''

Dated: August 31, 2005.

Daniel Schuman,

Chief, Cultural Programs Division, Department of State.

[FR Doc. 05–17804 Filed 9–7–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5185]

Culturally Significant Objects Imported for Exhibition Determinations: ''Clouet to Seurat: French Drawings from the British Museum''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Clouet to Seurat: French Drawings from the British Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about November 7, 2005 to on or about January 29, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 31, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–17807 Filed 9–7–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5184]

Culturally Significant Objects Imported for Exhibition Determinations: ''Fra Angelico''

ACTION: Notice; correction.

SUMMARY: On January 31, 2005, Notice was published on page 4913 of the **Federal Register** (Volume 70, Number 19) by the Department of State pertaining to the exhibition ''Fra Angelico.'' The referenced Notice is hereby corrected to include eight additional loans imported from abroad for temporary exhibition within the United States, which I hereby determine are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about October 25, 2005 to on or about January 29, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 31, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–17806 Filed 9–7–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Delegation of Authority No. 284]

Delegation of Authority to the Under Secretary for Political Affairs

By virtue of the authority vested in me as Secretary of State, including the authority of section 1 of the State

[14] 17 CFR 200.30–3(a)(12).

Department Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby delegate to the Under Secretary for Political Affairs, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued. This delegation includes all authorities and functions that have been or may be delegated or redelegated to other Department officials but does not repeal delegations to such officials.

This delegation shall apply when both the Secretary of State and the Deputy Secretary of State are absent or otherwise unavailable or when either the Secretary or the Deputy requests that the Under Secretary exercise such authorities and functions.

Notwithstanding this delegation of authority, the Secretary of State and the Deputy Secretary of State may exercise any function or authority delegated by this delegation.

This memorandum shall be published in the **Federal Register**.

Dated: August 26, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–17808 Filed 9–7–05; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Modification of Action Under Section 301(b); Out-of-Cycle Review Under Section 182; and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Modification of action under Section 301(b); out-of-cycle review under Section 182; and request for public comment.

SUMMARY: The United States Trade Representative (''Trade Representative'') has determined that an appropriate response to the Government of Ukraine's adoption of important improvements to its legislation protecting intellectual property rights (''IPR'') is to terminate the 100% *ad valorem* duties currently in place on Ukrainian exports. In addition, the Office of the United States Trade Representative (''USTR'') is conducting an out-of-cycle review (''OCR'') under Section 182 (commonly referred to as the ''Special 301'' provision) of the Trade Act of 1974, as amended (''Trade Act'') focused on whether Ukraine has implemented fully the legislative improvements and has otherwise strengthened IPR enforcement. At the conclusion of the OCR, the Trade Representative will determine whether to revoke the identification of Ukraine as a priority foreign country (''PFC'') and accordingly to change Ukraine's status on the Special 301 list, and whether to restore Ukraine's benefits under the Generalized System of Preferences (''GSP''). USTR requests written comments from the public concerning these matters.

DATES: The termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after August 30, 2005. Comments should be submitted by 5 p.m. on October 14, 2005.

ADDRESSES: Comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0524@ustr.eop.gov,* with ''Ukraine-IPR'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: For questions concerning procedures for filing comments in response to this notice: Sybia Harrison, Staff Assistant to the Section 301 Committee, USTR, (202) 395–3419; for questions concerning the Special 301 out-of-cycle review: Jennifer Choe Groves, Director for Intellectual Property and Chair of the Special 301 Committee, USTR, (202) 395–4510, Laurie Molnar, Director for European and Mediterranean Trade Affairs, USTR, (202) 395–4620, or Stephen Kho, Associate General Counsel, USTR, (202) 395–3150; for questions concerning procedures under Section 301: William Busis, Associate General Counsel and Chairman of the Section 301 Committee, USTR, (202) 395–3150; and for questions concerning entries: Teiko Campbell, Program Officer, Office of Trade Compliance and Facilitation, U.S. Customs and Border Protection, Department of Homeland Security, (202) 344–2698.

SUPPLEMENTARY INFORMATION:

History of the 301 Investigation

On March 12, 2001, the Trade Representative identified Ukraine as a PFC under Special 301. The PFC identification was based on deficiencies in Ukraine's acts, policies and practices regarding IPR protection, including weak enforcement, as evidenced by alarming levels of piracy of optical media products (such as CDs and DVDs), and the failure of the Government of Ukraine to enact adequate and effective IPR legislation to address optical media piracy. The Trade Representative simultaneously initiated an investigation (Docket 301–121) under Section 301(b) of the Trade Act in order to investigate these IPR protection issues. See 66 FR 18,346 (April 6, 2001).

In August 2001, the Trade Representative determined that the acts, policies, and practices of Ukraine with respect to IPR protection were unreasonable and burdened or restricted United States commerce, and were thus actionable under section 301(b) of the Trade Act. As an initial action in response, the Trade Representative suspended GSP treatment accorded to products of Ukraine, effective August 24, 2001. *See* 66 FR 42,246 (Aug. 10, 2001).

In December 2001, the Trade Representative took the additional action of imposing 100% *ad valorem* tariffs on certain Ukrainian exports with an annual trade value of approximately $75 million, effective January 23, 2002. The trade value of the action was based on the level of the burden on U.S. commerce resulting from Ukraine's inadequate protection of U.S. IPR. *See* 67 FR 120 (Jan. 2, 2002).

In July 2005, USTR notified in writing representatives of U.S. copyright industries that, pursuant to Section 307(c) of the Trade Act, the suspension of Ukraine's GSP benefits would terminate unless USTR received a written request for a continuation from one or more representatives of U.S. copyright industries prior to the four-year anniversary of the GSP suspension (*i.e.*, prior to August 24, 2005). U.S. copyright industry representatives responded in writing prior to August 24, 2005 by requesting that the GSP suspension remain in place until USTR determines that Ukraine has adequately improved IPR enforcement. Accordingly, the suspension of GSP benefits continued under Section 307(c) of the Trade Act.

Since 2001, the Government of the United States has been working with the Government of Ukraine to address the IPR protection issues that are the subject of this investigation. In particular, the United States has been encouraging Ukraine (i) to improve its IPR legislation, and (ii) to enhance enforcement of existing IPR laws by, for example, shutting down pirate optical disc factories.

Ukraine's July 2005 Legislation and Termination of 100% *ad valorem* Duties

On July 6, 2005, the Ukrainian parliament approved a package of important amendments to its Laser-readable Disc Law (the ''optical media amendments'') that strengthen Ukraine's licensing regime and enforcement capabilities to stem the illegal production and trade of optical media products. President Yushchenko signed the amendments into law on July 26, 2005, and they were formally promulgated on August 2, 2005.

Section 307(a) of the Trade Act authorizes the Trade Representative to ''modify or terminate any [Section 301] action, subject to the specific direction, if any, of the President * * * if * * * such action is being taken under Section 301(b) and is no longer appropriate.'' In passing the optical media amendments, the Government of Ukraine has addressed one of the two issues (those being inadequate IPR legislation and inadequate IPR enforcement) that were the basis of the PFC designation and the Trade Representative's finding that Ukraine's inadequate IPR protections were actionable under Section 301(b). The Trade Representative has determined that an appropriate response to Ukraine's adoption of the optical media amendments is to terminate the 100% *ad valorem* duties that have been in place since January 2002. As set out in the Annex to this notice, the termination of 100% *ad valorem* duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after August 30, 2005. Prior to terminating the 100% *ad valorem* duties, USTR consulted with U.S. copyright industries and at this time is providing an opportunity for public comment.

Out-of-Cycle Review and Next Steps

The other action previously taken under Section 301—the August 2001 suspension of Ukraine's GSP benefits—will continue pending the results of the OCR of Ukraine's Special 301 status. The OCR focuses on whether Ukraine has fully implemented the optical media amendments and has otherwise improved its IPR enforcement.

At the conclusion of the OCR, the Trade Representative will consider (1) whether to take action under section 182(c)(1)(A) of the Trade Act, which authorizes the Trade Representative to revoke the identification of any foreign country as a PFC at any time; and (2) whether to terminate the suspension of GSP benefits. As specified below, USTR seeks public comments in relation to the OCR and the possible restoration of Ukraine's GSP benefits.

Request for Public Comments

USTR invites public comments on the following matters:

(i) *100% ad valorem duties*—Comments on the termination of the 100% *ad valorem* duties, which (as noted) is effective for entries on or after August 30, 2005;

(ii) *GSP benefits*—Comments on the suspension of Ukraine's GSP benefits, including the effectiveness of the GSP suspension in achieving the objectives of the 301 investigation; the effects of the GSP suspension on the U.S. economy, including consumers; and the possible restoration of GSP benefits upon conclusion of the OCR; and

(iii) *OCR*—Comments addressing the Special 301 status of Ukraine in the light of Ukraine's enforcement of its IPR laws, including a description of any problems with and/or improvements in IPR enforcement in Ukraine (including, but not limited to, implementation of the optical media amendments) and the effect of such problems and/or improvements on U.S. commerce.

Submitters should feel free to address any or all of the above matters. Submitters should make their comments as detailed as possible and should provide all necessary information for assessing the assertions made in the comments.

Comments should be submitted by 5 p.m. on October 14, 2005. All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0524@ustr.eop.gov,* with ''Ukraine-IPR'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the email address above. No submissions will be accepted via postal service mail.

Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documents submitted as spreadsheets are acceptable as Quattro Pro or Excel files. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Comments must be in English.

In accordance with 15 CFR 2006.15, a submitter may request that information contained in a comment be treated as confidential business information exempt from public inspection. In such case, the submitter must also provide a non-confidential version of the comment. For any document containing confidential business information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter.

Public Inspection of Submissions

Within one business day of receipt, non-confidential submissions will be placed in a public file open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday.

William Busis,

Chairman, Section 301 Committee.

Annex

I. Effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after August 30, 2005, the imposition of 100 percent *ad valorem* tariffs as provided in subheadings 9903.27.01 (affecting articles in subheading 2710.19.05, 2710.19.10, 2710.99.05 or 2710.99.10); 9903.27.02 (affecting articles in subheading 2804.29.00); 9903.27.03 (affecting articles in subheading 2825.60.00); 9903.27.04 (affecting articles in subheading 2849.20.10 or 2849.20.20); 9903.27.05 (affecting articles in subheading 3105.51.00); 9903.27.06 (affecting articles in subheading 3206.11.00 or 3206.19.00); 9903.27.07 (affecting articles in subheading 4804.51.00); 9903.27.08 (affecting articles in subheading 6403.99.60, 6403.99.75 or 6403.99.90); 9903.27.09 (affecting articles in subheading 6404.19.35); 9903.27.10 (affecting articles in subheading 7102.10.00); 9903.27.11 (affecting articles in subheading 7102.31.00 or 7102.39.00); 9903.27.12 (affecting articles in subheading 7115.10.00); 9903.27.13 (affecting articles in heading 7402.00.00); 9903.27.14 (affecting articles in subheading 7601.20.90); and 9903.27.15 (affecting articles in subheading 8418.69.00) of the Harmonized Tariff Schedule of the United States is terminated.

II. Effective August 30, 2005, the instruction in the notice of January 2, 2002, 67 FR 120, that ''any merchandise

subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41'' is terminated.

[FR Doc. 05–17751 Filed 9–7–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–99–5578, FMCSA–99–6480, FMCSA–2000–7363, FMCSA–2000–8398, FMCSA–2001–9258, FMCSA–2001–9561, FMCSA–2003–14504]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 23, 2005. Comments from interested persons should be submitted by October 11, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–4334, FMCSA–99–5578, FMCSA–99–6480, FMCSA–2000–7363, FMCSA–2000–8398, FMCSA–2001–9258, FMCSA–2001–9561, and FMCSA–2003–14504 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 20 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Grady L. Black, Jr.
John A. Chizmar
Weldon R. Evans
Richard L. Gagnebin
Orasio Garcia
Chester L. Gray
James P. Guth
Rayford R. Harper
Paul M. Hoerner
Edward E. Hooker
Michael S. Maki
John E. Musick
Kenneth A. Reddick
Leonard Rice, Jr.
Richard C. Simms
Edd J. Stabler, Jr.
James T. Sullivan
Steven C. Thomas
Edward A. Vanderhei
Larry J. Waldner

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 54775; 64 FR 27027; 64 FR 51568; 66 FR 48504; 64 FR 68195; 65 FR 20251; 65 FR 45817; 65 FR 77066; 65 FR 78256; 66 FR 16311; 68 FR 13360; 66 FR 17743; 66 FR 33990; 68 FR 35772; 66 FR 30502; 66 FR 41654; 68 FR 19598; 68 FR 33570). Each of these 20 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 11, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: August 31, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–17736 Filed 9–7–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2005–22365]

Establishment of a Temporary Emergency Relief Docket and Procedures for Handling Petitions for Emergency Waiver Relief From the Federal Regulations

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of hurricane Katrina, the Federal Railroad Administration (FRA) is establishing a temporary means for handling petitions for waiver from the federal regulations that are directly related to the effects of the hurricane or are necessary to effectively address the relief efforts being undertaken in the area. FRA recognizes that these types of petitions must be afforded special consideration and must be handled expeditiously in order to ensure that the safety of the public and the safety of those individuals and businesses providing aid to the region are immediately addressed. This document is intended to provide all interested parties notice of FRA's intent to establish a temporary Emergency Relief Docket which will be used to provide interested parties notice of the filing of such petitions for waiver. This document also contains the procedures for submitting and responding to such petitions for waiver as well as detailing the procedure that FRA will temporarily utilize to respond to these types of requests.

For Futher Information Contact: Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., RRS–2, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6302), or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6036).

Background Information

On August 29, 2005, hurricane Katrina hit the southern gulf region of the United States. The aftermath of the hurricane has revealed unprecedented damage to property and a constantly increasing loss of life. As the nation turns toward the task of saving lives, providing adequate living facilities for displaced families, and rebuilding the devastated areas, our nation's railroads will play a key role in these efforts by providing necessary supplies and by moving displaced families and relief personnel to and from the area. In an effort to ensure that this mission is safely, effectively, and timely performed, FRA believes it is necessary to establish a method by which FRA can quickly and efficiently handle requests for relief from the Federal regulatory requirements that are directly related to the effects of hurricane Katrina or that will impact the relief effort being undertaken in that segment of the United States.

FRA's existing procedures related to the handling of petitions for waiver from the Federal safety regulations contained in 49 CFR part 211, do not lend themselves to quick and immediate decisions by the agency, nor were they intended to. The existing procedures establish a process whereby FRA publishes a notice of any petition for waiver in the **Federal Register.** This notice then allows interested parties a period of time in which to comment on any such petition, generally thirty (30) days, and provides for a public hearing should one be requested. This process generally takes several months to accomplish. As noted above, this process would not be appropriate for handling petitions for waivers directly related to addressing the effects of hurricane Katrina, the outcome of which could have a serious impact on the health and safety of those members of the public directly affected by the hurricane as well as those individuals aiding the relief efforts. Thus, FRA is instituting temporary procedures for handling petitions for waivers that are directly related to the effects and aftermath of hurricane Katrina. FRA believes these temporary emergency procedures will provide the agency with the ability to promptly and effectively address waiver requests directly related to the hurricane while ensuring that the public and all interested parties are afforded proper notice of any such request and are provided a sufficient opportunity to comment on any such request.

Procedures

1. These emergency procedures will only be in effect for a period not to exceed nine (9) months from the date of publication of this document, unless later extended.

2. The procedures will only be used to address petitions for waivers that FRA determines are directly related to hurricane Katrina. Petitions submitted to FRA should specifically address how the petition is related to the aftermath of the hurricane or related relief efforts.

3. Any relief granted through these emergency procedures will only be effective for the nine (9) month period that these emergency procedures remain in place.

4. FRA has created the Emergency Relief Docket FRA–2005–22365 in the publicly accessible Department of Transportation (DOT) Document Management System (DMS). The docket can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at *http://dms.dot.gov.* All documents in this docket are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). The DMS internet site also allows any interested party to subscribe, without fee, to its list serve application which will automatically notify the party via e-mail when documents are added to the Emergency Relief Docket (FRA–2005–22365).

5. Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the Emergency Relief Docket (FRA–2005–22365). (If FRA determines that a petition meets the criteria for use of the emergency procedures it will so notify the petitioning party). The DMS numbers each document that is added to a docket. For example, the first document submitted to the docket will be identified as FRA–2005–22365–1. Thus, each petition submitted to the Emergency Relief Docket will have a unique document number which should be identified on all communications related to petitions contained in this docket.

6. FRA will allow a 72-hour comment period from the time the petition is entered into and available on the DMS. Any comment received after that period will be considered to the extent practicable.

7. Interested parties will be given multiple methods by which they may submit views, data or comment. All communications should identify the appropriate docket (FRA–2005–22365) and should identify the specific document number, discussed above. Interested parties may submit their comments using any of the following methods:

a. Direct e-mail to FRA at: *RRS.Correspondence@fra.dot.gov.*

b. Direct fax to FRA at: 202–493–6309.

c. Submission of comments to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590.

Any comments or information sent directly to FRA will be immediately provided to the DOT DMS for inclusion into the Emergency Relief Docket.

8. Parties interested in having a public hearing on any petition must notify FRA within 72 hours of the posting of the petition in the Emergency Relief Docket. If FRA receives a request for a public hearing from any interested party, FRA will immediately arrange for a telephone conference between all interested parties as soon as practicable. Thus, interested party submitting comments or information on any petition for waiver should include telephone numbers at which its representatives may be contacted should the need arise. After such conference, should a party still request a public hearing one will be arranged as soon as practicable pursuant to the provisions contained in 49 CFR part 211.

9. FRA may grant a petition for waiver prior to conducting a public hearing if such action is in the public interest and consistent with safety or in situations where a hearing request is received subsequent to the 72-hour comment period. In such an instance, FRA will immediately notify the party requesting the public hearing and will arrange to conduct such hearing as soon as practicable.

10. FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments received subsequent to the 72-hour comment period or at a later scheduled public hearing.

11. All FRA decision letters, either granting or denying a petition, will be posted in the Emergency Relief Docket (FRA–2005–22365) and will reference the document number of the petition to which it relates.

FRA wishes to inform all interested parties that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on September 1, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–17840 Filed 9–2–05; 3:10 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 656X)]

CSX Transportation, Inc.—Abandonment Exemption—in Marion County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 17.51-mile line of its Southern Region, Huntington Division East, Fairmont Subdivision, between Barrackville, milepost BS 306.32, and Mannington, milepost BS 319.48, including the Dents Run Spur between milepost BSB 0.00 and milepost BSB 4.35, in Marion County, WV.[1] The line traverses United States Postal Service Zip Codes 26528, 26587, 26571, 26554, and 26559.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been meet.

[1] CSXT received discontinuance authority over the involved line segment in *CSX Transportation, Inc.—Discontinuance Exemption—in Marion County, WV,* Docket No. AB–55 (Sub–No. 376X) (ICC served Apr. 4, 1991).

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 8, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 18, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 28, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the applicant's representative: Louis E. Gitomer, Ball Janik LLP, 91455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 13, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 8, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 1, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17811 Filed 9–7–05; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: This meeting will be held on Friday, September 23, 2005. The meeting will be held via teleconference and will begin at 10 a.m. eastern daylight time. Interested parties will be able to listen to the meeting. Call-in information will be posted on the Panel's Web site, *http://www.taxreformpanel.gov*, at a later date.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov*.

SUPPLEMENTARY INFORMATION: *Purpose:* The September 23 meeting is the thirteenth meeting of the Advisory Panel. At this meeting, the Panel will continue to discuss issues associated with reform of the tax code. There is a possibility that this meeting will not take place as scheduled. Please check the Panel's web site for updated information.

Comments: Interested parties are invited to call into the teleconference to listen to the meeting; however, no public comments will be heard at the meeting. Any written comments with respect to this meeting may be mailed to The President's Advisory Panel on Federal Tax Reform, 1440 New York Avenue, NW., Suite 2100, Washington, DC 20220. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov*.

Dated: September 6, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–17932 Filed 9–7–05; 8:45 am]

BILLING CODE 4811–33–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 7, 2005.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more

than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed and continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms:

Title: Change of Bond (Consent of Surety).

OMB Number: 1513–0013.

TTB Form Number: 5000.16.

Abstract: A Change of Bond (Consent of Surety) is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The Change of Bond (Consent of Surety) is filed with TTB and a copy is retained by TTB as long as it remains current and in force.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden Hours: 2,000.

Title: Taxable Articles Without Payment of Tax.

OMB Number: 1513–0027.

TTB Form Number: 5200.14.

Abstract: TTB needs this information to protect the revenue. If this TTB Form is not properly completed, TTB will assess the tax on the manufacturer of tobacco products or cigarette papers and tubes or on the proprietor of the export warehouse or customs manufacturing warehouse.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit and Federal Government.

Estimated Number of Respondents: 60,000.

Estimated Total Annual Burden Hours: 15,000.

Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

OMB Number: 1513–0051.

TTB Form Number: 5110.74.

Abstract: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production, and amount of spirits to be produced.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 734.

Estimated Total Annual Burden Hours: 1,321.

Title: Excise Tax Return—Alcohol and Tobacco.

OMB Number: 1513–0083.

TTB Form Number: 5000.24.

Abstract: Businesses report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes on TTB F 5000.24. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 28,000.

Estimated Total Annual Burden Hours: 35,280.

Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

OMB Number: 1513–0090.

TTB Form Number: 5000.25.

Abstract: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes on TTB F 5000.25. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 30.

Estimated Total Annual Burden Hours: 130.

Title: COLAs Online Access Request.

OMB Number: 1513–0111.

TTB Form Number: 5013.2.

Abstract: The information on this form will be used by TTB to authenticate end users on the COLAs Online system who electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted to records in multiple databases.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 300.

Dated: September 1, 2005.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. 05–17757 Filed 9–7–05; 8:45 am]

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Federal Register

Thursday,

September 8, 2005

Part II

Environmental Protection Agency

40 CFR Parts 124, 260, et al.

Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 260, 261, 267, and 270

[RCRA–2001–0029; FRL–7948–4]

RIN 2050–AE44

Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to the RCRA hazardous waste permitting program, originally proposed on October 12, 2001, to allow for a ''standardized permit.'' The standardized permit will be available to RCRA treatment, storage, and disposal facilities (TSDs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

The standardized permit will also be available to facilities which receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and which then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. The standardized permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits.

This rule finalizes the proposal, with changes based on public comments. In the preamble to proposed rule, the Agency also requested comments on other permitting-related topics including: how cleanups under non-RCRA state cleanup programs might be reflected in RCRA permits; the conclusions about captive insurance in a March, 2001 report by EPA's Inspector General; and whether insurers that provide financial assurance for hazardous waste and PCB facilities have a minimum rating from commercial rating services. The Agency is not taking action at this point on these questions.

DATES: This rule is effective on October 11, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 11, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2001–0029. All documents in the docket are listed in the DOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in DOCKET or in hard copy at the Resource Conservation and Recovery Act (RCRA) Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270

FOR FURTHER INFORMATION CONTACT: Jeff Gaines, Permits and State Programs Division, Office of Solid Waste, Mail Code 5303W, Environmental Protection Agency,1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8655; fax number: 703–308–8609; e-mail address: *gaines.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Get Copies of the Standardized Permit Rule and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2001–0029. The official public docket is the collection of materials specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the RCRA Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number. The official record for this action will be kept in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

Our responses to comments, whether the comments are written or electronic, appear in a response to comments document that we will place in the official record for this rulemaking.

Acronyms used in today's preamble are listed below:

APA: Administrative Procedures Act
EAB: Environmental Appeals Board
EPA: Environmental Protection Agency
CAMU: Corrective Action Management Unit
CFR: Code of Federal Regulations
EO: Executive Order
FR: Federal Regulations
HSWA: Hazardous and Solid Waste Amendments
MOU: Memorandum of Understanding
MSWLF: Municipal Solid Waste Landfill Facilities
NAICS: North American Industry Classification System
NPDES: National Pollution Discharge Elimination System
NTTAA: National Technology Transfer and Advancement Act
OMB: Office of Management and Budget
PIT: Permit Improvement Team
PPE: Personal Protection Equipment
RCRA: Resource Conservation and Recovery Act
RFA: RCRA Facility Assessment
SIC: Standard Industrial Classification
SBREFA: Small Business Regulatory Enforcement Fairness Act
SWMU: Solid Waste Management Unit
TSD: Treatment Storage and Disposal (facility)
UMRA: Unfunded Mandates Reform Act

The contents of today's preamble are listed in the following outline:

I. Authority

The Environmental Protection Agency is promulgating these regulations under

the authority of sections 1003, 2002(a), 3004, 3005, 3006, 3007, and 3010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

II. Overview and Background

A. Background

On October 12, 2001, we proposed revisions to the RCRA Hazardous Waste permitting program to allow for a ''standardized permit'' for RCRA TSDs that are otherwise subject to permitting and that generate and then store and/or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. In the proposal, we also requested comment on expanding the scope of the rule, *e.g.*, to all off-site facilities, to facilities who centralize their waste management operations, or to recyclers. The proposal laid out a streamlined approach to the permitting process, anticipating savings to both the regulatory authority and the permit applicant, while still providing protection to human health and the environment. Today's final rule adopts that proposal with some changes based on comments.[1]

B. Overview

This final rule describes the standardized permit, who is eligible for the permit, how facilities apply for the permit, how to make changes to the permit, and what the responsibilities are for the regulatory authority in reviewing and issuing the permit.

1. Effect of Today's Rule

Today's action potentially affects about 870 to 1,130 private sector and federal facilities that (a) generate and then store and/or non-thermally treat hazardous wastes on-site in tanks, containers, and/or containment buildings; and (b) which receive hazardous waste generated off-site by a generator that is under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. We estimate that these three types of eligible units represent 50% prevalence of the eleven major types of hazardous waste management units. Table 1 below identifies the economic sectors and associated counts of RCRA hazardous waste management units and facilities likely to be affected by this action. It is possible that other types of entities not identified in the Table could also be impacted; however the rule only affects three types of waste units. To determine whether you may be impacted, you should carefully examine the applicability section of the rule.

TABLE 1.—IDENTITY OF ECONOMIC SECTORS WHICH OWN AND OPERATE FACILITIES POTENTIALLY AFFECTED BY THIS RULE*

SIC code	Economic sector	NAICS code	Count of facilities with potentially affected hazardous waste management units (Note: low-end represents ''on-site'' only, and high-end represents on-site + off-site units)		
			Waste Containers	Waste tank systems*	Waste containment buildings
0	Agriculture, Forestry & Fisheries	11	21 to 30	12 to 17	0.
1	Mining, Oil/Gas & Construction	21, 23	26 to 37	16 to 23	0.
2	Manufacturing (Food, Textile/Apparel, Lumber/Wood, Furniture/Fixtures, Paper, Printing/Publishing, Chemicals & Allied Products, Petroleum/Coal).	31–33, 511	427 to 606	313 to 445	5 to 7.
3	Manufacturing (Rubber/Plastic, Leather, Stone/Clay/Glass, Primary Metals, Fabricated Metals, Industrial Machinery, Electronics, Transportation Equipment, Instruments, & Misc. Mfg).	31–33	285 to 405	136 to 193	17 to 24.
4	Transport, Communication, Utilities	22, 48, 49, 513, 562.	272 to 386	201 to 285	10 to 14.
5	Wholesale & Retail Trade	42, 44, 45	175 to 249	132 to 187	3 to 4.
6	Finance, Insurance & Real Estate	52, 53	5 to 7	2 to 3	0.
7	Services (Hotels, Personal, Automotive, Repair, Motion Pictures, & Recreation).	71, 72, 512, 514, 811, 812.	221 to 314	183 to 260	2 to 3.
8	Services (Health, Legal, Social, Museums/Gardens, Membership Organizations & Engineering Mgt.).	54, 55, 561, 61, 62, 813, 814.	90 to 128	38 to 54	0.
9	Public Administration, Environment & Not Elsewhere Classified.	92	200 to 284	85 to 121	4 to 6.
	Non-duplicative column totals** =		800 to 1,136	623 to 885	22 to 31.
	Non-duplicative total for three waste unit types =	866 to 1,133 facilities			

Explanatory Notes:
(a) SIC = ''Standard Industrial Classification'' system.
(b) NAICS = ''North American Industry Classification System'', adopted by the U.S. Federal Government in 1997, replacing the SIC code system (for SIC/NAICS conversion tables see *http://www.census.gov/epcd/www/naics.html*).
(c) * Only above-ground hazardous waste tanks are potentially eligible, not in-ground or underground tanks.
(d) ** Some facilities report multiple SIC and NAICS codes for their operations to the EPA; consequently both the facility and unit total counts in this table exceed the non-duplicative total numbers of facilities shown in the bottom row above.

2. What Is Being Finalized in Today's Rule?

We are finalizing revisions to the hazardous waste permitting program to allow for issuance of a RCRA standardized permit for RCRA TSDs that

[1] The Agency also took comment on other permitting related topics, including how facilities can satisfy corrective action through alternate cleanup programs, and issues related to financial assurance. The Agency is deferring action on those portions of the proposal.

are otherwise subject to RCRA permitting and that generate hazardous waste, and then store and/or non-thermally treat that waste on-site in tanks, containers, and/or containment buildings. The standardized permit will also be available to facilities that receive hazardous waste generated from off-site, as long as the off-site generator that sends the waste is under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings. Throughout the remainder of this preamble, the term ''manage'' and ''management'' will be used to mean storage or non-thermal treatment, unless otherwise noted. The specific provisions being finalized in today's rule are discussed in Sections III, IV, and V of this preamble. In this final rule, some changes have been made from what was proposed. Some of those changes include: Requiring the submission of the closure plan with the Notice of Intent, rather than 180 days prior to closure; adding a third category for making changes to permits (modifications); allowing for a 180-day extension to completing closure; and allowing a 30-day extension for agency review of the Notice of Intent materials. We are also requiring that off-site facilities, that are eligible for the standardized permit, must submit a waste analysis plan with their Notice of Intent.

C. What Is a Standardized Permit?

A standardized permit is a special kind of permit that would be available for certain facilities that manage hazardous waste in tanks, containers, and containment buildings. The permit consists of two parts: A uniform portion included in all cases, and a supplemental portion included at EPA's or the State permitting authority's discretion. (See Section I.C.1 of the proposed rule at 66 FR 52195 for a more detailed discussion regarding the two parts of the permit.) The part 267 requirements being finalized today provide the basis for the uniform portion of the permit. The supplemental portion includes additional provisions deemed necessary to be protective of human health and the environment, including any corrective action, and would be based on site-specific factors at the facility.

D. Who Is Eligible for a Standardized Permit?

Throughout this preamble, we use the terms on-site and off-site in reference to facilities managing hazardous waste. When we use the term off-site, we use it to help describe where the waste is being managed. For example, if facility ''A'' generates a waste and then sends the waste to facility ''B'' for treatment, storage or disposal, the waste is being managed off-site. In the final rule, two types of facilities will be eligible for a standardized permit. To be eligible, a facility must:

(1) Generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings, or

(2) Receive hazardous waste generated from off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

In the proposed rule, we limited the applicability of the standardized permit to those facilities that manage hazardous waste on-site. However, we also requested comment on whether we should extend eligibility to facilities managing wastes generated off-site (commercials, recyclers, and captives). A number of commenters argued that we should extend eligibility to off-site facilities suggesting that commercial facilities are better prepared and equipped to conduct waste storage (since they were specifically in the hazardous waste management business), that the rule would provide flexibility for facilities in accepting a variety of waste streams, and would benefit facilities and States by reducing costs.

On the other hand, other commenters, particularly States, believed that the standardized permit should be limited to facilities that generate and manage hazardous waste on-site and not be extended to off-site facilities. Commenters argued that such off-site facilities are often more complex and may in some cases pose a greater potential for harm to the environment. Other concerns were also raised, including that off-site facilities might not have adequate knowledge of the wastes they receive, that off-site facilities may potentially accept a wide variety of incompatible wastes, and that inadequate waste analysis could be a problem for off-site facilities. As such, these commenters argued that direct review of the permit application (*i.e.*, the material normally submitted as part of a Part B application) by the permitting authority was an essential step in permitting off-site facilities.

A number of commenters noted that some facilities accept waste from off-site locations of the same company for centralized management of their wastes, and argued that these facilities would be appropriate candidates for a standardized permit. For example, one commenter suggested these types of facilities could be granted a standardized permit on a case-by-case basis, depending on complexity of their processes and waste streams.

Another commenter noted that extending the standardized permit to centralized facilities would allow a company with multiple manufacturing locations to centralize its management of hazardous waste at a single location without being denied the tangible benefits of streamlined permitting proposed in the Standardized Permitting Rule. Since the company would only be managing its own waste generated from its own operations, the company could reasonably be expected to know the chemical make-up and compatibility of the different incoming waste streams. Moreover, companies have procedures in place to assure that off-site waste streams are properly stored and/or treated at centralized locations.

Another commenter noted that managing wastes at these facilities (centralized facilities) should not be more complicated or require greater attention than managing wastes generated on-site because ''* * * a company managing only its own waste generated at several locations * * * should know what specific wastes are generated by the company and be able to manage them properly at a centralized location.''

Still another commenter noted problems with off-site facilities in general, but also noted that it would expect that fewer problems would result from allowing off-site facilities who manage only their own wastes generated at different locations to be eligible for the standardized permit because of the familiarity of the company with the composition and character of its own wastes.

Another commenter argued that multiple sources of waste generated by the same company and managed in a consolidated fashion at a treatment/storage (T/S) facility owned and operated by that company (a captive facility as opposed to a commercial one) should still be eligible for the standardized permit. Captive facilities have greater control over the waste generation process and therefore the characteristics of the waste to be managed at the T/S facility.

In response to comments on the proposal, the Agency has been persuaded by the commenters who argued that facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or

containment buildings should be eligible for the standardized permit. Therefore, the final rule expands the eligibility so that a facility with a standardized permit can also receive waste generated at another location that is under the same ownership as the receiving facility. For example, waste from one company could be sent to the standardized permit facility owned by that company. This would also apply to wholly owned subsidiaries, for example where a national corporation had wholly owned subsidiaries separately incorporated in different States. As long as the corporate ownership was the same, and the same corporate entity had ultimate oversight and responsibility, off-site management under the standardized permit would be allowed. EPA anticipates that this change will broaden the benefits of this rule to operations under the same entity. To use this flexibility, the Notice of Intent must include documentation that the off-site facility is under the same ownership as the facility seeking the standardized permit. In addition, to receive wastes from off-site, facilities must also submit a waste analysis plan with the Notice of Intent. We discuss the need for waste analysis plans later in the preamble in Section IV.C.4.

With respect to federal facilities, this rule would allow the transfer of waste between sites under the jurisdiction, custody, or control of the same federal agency. For instance, today's rule would, for instance, allow waste from one Department of Defense installation to go to another such installation because the Department has overall responsibility for the waste. The Department of Energy's comments on the proposal suggested allowing for consolidation of waste from multiple facilities within the DOE complex at a regional facility with a standardized permit. This expansion of the eligibility would allow for this consolidation.

EPA did not, however, extend the applicability to wastes that were not generated by the same entity. While we are extending eligibility to a limited subset of off-site facilities, we are not extending eligibility for the standardized permit rule to all off-site facilities.

One commenter noted that ''As the number of waste streams increases so does the complexity of identification and handling. As a commercial TSD a large portion of our infrastructure is devoted to waste identification, verification analysis to ensure proper disposal. This follows detailed procedures. The 'physical' aspects such as handling, storage or treatment are minor compared to the identification, tracking and documentation aspects of waste handling. It is difficult to conceive how the EPA could allow this kind of activity to be conducted without prior review of appropriate procedures.''

Another commenter noted that ''In general, facilities that treat or store waste generated off-site should not be allowed to get a standardized permit. Most of the facilities which accept off-site wastes are commercial facilities that accept many of the waste codes listed in 40 CFR part 261. This creates the need for a fairly in-depth waste analysis plan which would be hard to review within the 120-day limit.''

Because of the potential variation in types of wastes managed at off-site facilities in general, and the length of time necessary to review waste analysis plans associated with such facilities, we believe it appropriate to limit applicability of the standardized permit rule to those facilities receiving wastes from generators under the same ownership as the receiving facility.

Commenters expressed concerns about the complexity of operations on many ''non-captive'' and commercial facilities, the large number of wastes that may come in to the sites from many different locations and the environmental problems they've encountered. Commenters believed such facilities needed closer scrutiny to ensure they are operating in a safe manner, and would be better served by operating under an individual RCRA permit. In considering all the comments, and in attempting to balance the streamlined permitting that would be gained from the rule against the possible risk to human health and the environment, we have decided to allow the following types of facilities to be eligible for the standardized permit: (1) Facilities that manage their hazardous waste on-site in tanks, containers, and containment buildings and (2) facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. The response to comments document on this final rule provides additional discussion on this topic.

It should also be noted that the Agency is exploring whether to extend eligibility for the standardized permit to other off-site facilities that have demonstrated superior environmental performance; the National Performance Track Program provides an example of the kind of criteria/facilities that EPA is considering in this context.[2] We believe it may be appropriate to offer this option to such facilities to further encourage superior environmental results. In fact, the Agency believes it important to reward companies that are top environmental performers and therefore, believe that such a change may be appropriate. The Agency anticipates issuing a proposed rulemaking involving Performance Track facilities in the near future.

An additional situation involves facilities that manage hazardous wastes in units eligible for the standardized permit, and also manage hazardous wastes in other types of waste management units. In our proposal, we solicited comment on whether a facility that manages some of its hazardous waste in on-site storage and/or non-thermal treatment units and some of its hazardous waste in other types of waste management units should be eligible for a standardized permit for their storage and/or non-thermal treatment activities. Several commenters agreed that on-site storage should be eligible for the standardized permit, even if the facility has other permitted operations on-site. Other commenters, however, did not support this measure, noting that having two regimes of RCRA permitting at the same facility would complicate matters. In this final rule, we are allowing facilities to have both a standardized permit for their eligible units, and an individual permit for their other regulated waste management activities because we believe there is a benefit in terms of permit streamlining for those eligible units. Some facilities may have a significant portion of their operations devoted to standardized permit-eligible storage and/or non-thermal treatment activities, which may make a dual permitting scenario worthwhile. Moreover, if a facility believes that having two RCRA permitting schemes at their plant would complicate matters, they need not apply for a standardized permit.

Therefore, the final rule will allow facilities with regular RCRA permits to apply for a standardized permit for their storage and non-thermal treatment operations occurring in eligible units. Such facilities could then have an individual permit for some of their operations, and a standardized permit for their eligible units. However, the

[2] The National Environmental Performance Track program recognizes and encourages top environmental performance among private and public facilities in the United States. Performance Track members go beyond compliance with regulatory requirements to achieve environmental excellence. Currently the program has approximately 300 members.

Director has the final decision on whether a facility will be allowed to operate with dual permits, based on facility-specific factors.

One commenter urged the Agency to be clearer in the final rule that the standardized permit rule will not require generators, already exempt from permitting in certain circumstances under § 262.34, to obtain permits. This rulemaking does not modify the provisions applicable to generators managing wastes within the time limits and conditions of § 262.34. It applies only to activities of RCRA TSDs that are otherwise subject to permitting (and who generate and then store or treat waste on-site in containers, tanks, or containment buildings, or facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings). We have revised the regulatory language and the preamble to make this point clear.

E. Other General Comments on the Standardized Permit Rule

We believe the standardized permit should result in time and resource savings in the overall permitting process. While owners/operators of such facilities will be required to gather nearly the same information that an individual permit applicant must gather, such information (*e.g.*, Part B application) will only need to be kept at the facility, or other location designated by the Director, as opposed to submitting it to the permitting authority. In fact, several commenters mentioned that the standardized permit would provide a less cumbersome approach for such storage units, than would the individual RCRA permitting process. Specifically noted was the provision that fewer documents would need to be submitted in the application phase, which should save time during the application review phase. We believe that because the standardized permit process would involve review of fewer materials, permits could be issued in less time than with the typical Part B permitting process.

Some commenters argued that the standardized permit process does not facilitate public involvement, because the technical parts of the application will not be circulated as is the case with the individual permitting process, or because the public might not feel comfortable going to the facility to review information. We believe the public will have ample opportunity to be involved, both with the pre-application meeting, and during the public comment period after the draft permit is public noticed. It should also be noted that the Director has the discretion to establish an information repository that contains the permit information at a location off-site from the facility, if such a location will better foster public participation. To the extent that the public has concerns with the uniform portion of the permit being fully protective because of unique facility circumstances, the public can request that these concerns be addressed in the supplemental portion of the permit. Nevertheless, the facility would still be subject to similar management standards and thus, would still be fully protective of human health and the environment.

Other commenters argued that the standardized permit process could result in unsafe waste storage practices, because not all the technical information about the facility processes would be reviewed prior to permit issuance. We disagree with these commenters. We believe the regulations in today's rule provide the mechanisms necessary to ensure safe waste management even without requiring the up-front submission of all of the technical information about the facility processes.

The units eligible for the standardized permit (tanks, containers, and containment buildings) are relatively straightforward technologies, with straightforward permitting requirements, and, as we discuss in the proposed rule preamble (66 FR 52196), are relatively simple to design and properly construct. The engineering and construction knowledge and skills necessary to design and construct these units are relatively basic. These units are in common usage in many applications and are frequently bought ''off-the-shelf'' or built from ''off-the-shelf'' designs. Industry associations and standards organizations have developed standards for these units that are in widespread use. Past experience with these units indicates that they are simpler to design, construct, and manage than units such as combustion units or land disposal units. Storage and non-thermal treatment of waste in these types of units is generally less complicated than thermal treatment of waste (*e.g.,* combustion of hazardous waste in incinerators, boilers, or industrial furnaces) or disposal of waste (*e.g.,* landfilling). It is easier to control risks at these simpler storage and treatment units. We believe that the streamlined standardized permit allows adequate interaction and oversight by the regulating agency and would provide sufficient technical controls to protect human health and the environment. Furthermore, the permitting requirements in part 267 largely reflect the existing part 264 requirements, which are protective of human health and the environment. For example, part 267 includes unit specific requirements for how waste management units are operated and maintained (*e.g.,* secondary containment, response to spills, condition of units, etc.). Part 267 also includes corrective action and financial responsibility requirements. Today's rule also provides for public comment and review on the draft permit prior to final permit issuance, as well as a mechanism for public involvement prior to the submission of the Notice of Intent. In addition, even though this information will not be required to be submitted as part of the Notice of Intent, the information must be retained at the facility, and be made available for the Director/Permitting authority to review, should any questions remain about whether a standardized or individual permit should be issued, or whether additional site-specific conditions are necessary. Finally, the Director retains the ability to impose any site-specific conditions, in the supplemental portion of the permit, necessary to protect human health and the environment. Thus, the standardized permit process, while it will likely speed up the process of issuing permits for eligible facilities that store or non-thermally treat waste in tanks, containers, or containment buildings, will do so in a manner that would still provide full protection of human health and the environment.

One commenter requested clarification that the standardized permit could apply to mixed wastes. The standardized permit rule could in fact apply to the management of mixed waste, presuming the other regulatory conditions were met.

Finally, one commenter noted that the standardized permit process would limit the regulatory authority's ability to determine compliance with the waste analysis and closure plans. We agree with the commenter, at least with respect to the closure plan, and in part to the waste analysis plan. The rule has been modified to require facilities to submit a closure plan with the Notice of Intent. Requiring the plan up front would allow the regulatory authority to review the plan, and would also allow the public to review the plan during the public comment period for the publicly noticed permit. The closure plan would become part of the permit at final permit issuance. The rule also has been modified to require submission of the waste analysis plan for facilities that are

applying to manage waste that were generated off-site.

Due to the streamlined nature of the standardized permit process, we believe that facilities conducting routine storage and treatment on-site have good knowledge of the characteristics of the waste they generate and manage and should be able to safely operate within a self-certification of compliance process, while maintaining the extensive information, normally submitted with a Part B application, on-site. Furthermore, 40 CFR 267.13 provides a detailed account of the waste analysis plan requirements, which when combined with an audit and compliance certification should be sufficient to ensure compliance. However, facilities that receive waste from off-site will be required to submit a waste analysis plan and maintain a copy of the waste analysis plan on-site. Although we generally believe that common ownership between the generating and receiving facilities means that the receiving facility could reasonably be expected to have a greater familiarity with the characteristics of the wastes generated from off-site than other off-site facilities, such facilities will still likely have less knowledge/familiarity than the waste generator. Consequently, the Agency believes that the additional safeguard provided by submission of the waste analysis plan is necessary to reduce any uncertainties regarding extension of the standardized permit to such facilities, and to allow the regulatory authority an adequate opportunity to determine whether management procedures are adequately protective, or whether additional, site-specific conditions are warranted.

F. Should a Standard Form Be Developed for Preparing the Required ''Part B'' Information?

We requested comment in the proposal on whether we should develop a ''fill-in-the-blank'' type form that facilities could use as a tool to help prepare the information required to be maintained at the facility. A number of commenters supported the development of a ''fill in the blank'' type of form. Therefore, we are currently looking into the feasibility of developing a form that can be used to assist permit applicants gather the required information that must be maintained at the facility to support a standardized permit. If and when a form is developed, it will be available from EPA on OSW's hazardous waste permitting Web site at: *http://www.epa.gov/epaoswer/hazwaste/permit/index.htm.*

G. Should the Current Provisions for Final Issuance of an Individual Permit Apply to Standardized Permits?

As proposed, the provisions for final issuance of the standardized permit are set forth in § 124.205, and are the same as the current procedures for final issuance of an individual permit, codified in § 124.15. We did not receive any significant comment on this question, and believe that the current provisions for final permit issuance are appropriate for issuing standardized permits. Therefore, we are finalizing § 124.205, as proposed.

III. Section by Section Analysis and Response to Comments for the 40 CFR Part 124 Requirements Related to the Standardized Permit Rule

A. Applying for a Standardized Permit

This section discusses the overall process of how owners and/or operators apply for and obtain a standardized permit. For clarification, the application for a standardized permit is known as a ''Notice of Intent.''

1. How Do I Apply for a Standardized Permit?

This part of the preamble discusses the steps involved in applying for a standardized permit which are laid out in 40 CFR part 124 subparts A, B, and G. The steps involve the pre-application meeting with the public followed by the submission of a Notice of Intent and supporting materials. The Notice of Intent and supporting materials, in most cases, should provide sufficient information for the Director to make a draft permit decision. Any lack of information could be a basis for the Director to determine that a facility is ineligible for a standardized permit.

a. How Do I Conduct a Pre-Application Meeting?

Today's rule subjects you to the existing requirements of § 124.31, obligating you to advertise and host a meeting with the neighboring community before submitting your Notice of Intent. The meeting with your community is designed to provide an open, flexible, and informal occasion for you and the public to share ideas, educate each other, and start building the framework for a solid working relationship. The meeting discussion should address topics such as: The type of facility, the location, the general processes involved, the types of wastes managed, and planned waste minimization and pollution control measures. The discussions also could include such topics as planned procedures for preventing or responding to accidents or releases. When you submit your Notice of Intent, you will need to provide a summary of the meeting, including a list of attendees. No major comments were received on this section and we are finalizing § 124.31 as proposed.

The Agency encourages facilities to refer to the RCRA Public Participation Manual (EPA530–R–96–007, September 1996, available at *http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm*) to promote successful and equitable public involvement in RCRA permitting activities.

b. How Do I Submit a Notice of Intent To Operate Under the Standardized Permit?

The requirement to submit a Notice of Intent to operate under a standardized permit is laid out in § 124.202, and is consistent with the process and terminology currently used for NPDES general permits. The Notice of Intent is composed of the documents described under § 270.275 and include the RCRA Part A information, the closure plan, the closure cost estimate, documentation of the financial instrument to cover closure, information supporting that you meet the location standards, the pre-application meeting, and materials required under § 270.280 (which include the required certifications and audit report). In addition, facilities that wish to accept waste from off-site, the Notice of Intent must include the waste analysis plan, and documentation that the originating generator and the facility seeking the standardized permit are under the same owner.

While the proposal did not require submission of the closure plan at the time the Notice of Intent was submitted, the final rule does include this requirement. Several commenters argued that the closure plan should be submitted to help assure the regulatory authority of the owner/operator's ability to complete closure, and also that a closure plan would help support closure cost estimate figures. We agree with these commenters and are finalizing the rule to require submittal of the closure plan with the Notice of Intent. See also the discussion in Section IV.G, for additional explanation of EPA's decision to require submission of the closure plan with the Notice of Intent. It should be noted that the closure plan should provide sufficient detail to assure the Director that the facility can close and show how the facility will be closed. Failure to submit sufficient information in the closure plan might be cause for a facility to be considered ineligible for a standardized permit. In addition to the closure plan, a closure

cost estimate must be submitted, as must documentation showing the existence of a financial assurance instrument sufficient to cover closure.

Some commenters also argued that the waste analysis plan should be submitted with the Notice of Intent, and that submitting the plan would help assure the regulatory authority that the owner/operator has adequate knowledge of the waste streams being managed (waste compatibilities, characterization), especially if the rule were extended to include off-site facilities.

We generally believe that on-site facilities have good knowledge of the wastes they are managing, and therefore, we are not requiring that waste analysis plans be submitted with their Notice of Intent. Due to the streamlined nature of the standardized permit process, we believe that facilities conducting routine storage and treatment on-site have good knowledge of the characteristics of the waste they generate and manage, and should be able to safely operate within a self-certification of compliance process, while maintaining the extensive information, normally submitted with a Part B application, on-site. Furthermore, 40 CFR 267.13 provides a detailed account of the waste analysis plan requirements, which when combined with an audit and compliance certification should be sufficient to ensure compliance. In the final rule, we will not require waste analysis plans for such facilities to be submitted, but maintained on-site. However, as noted previously, the Agency is also allowing facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, to also be eligible for the standardized permit. In this situation, the facility will be required to submit the waste analysis plan with the Notice of Intent. As discussed previously, we believe it necessary for the waste analysis plan to be submitted to help ensure that waste management procedures are adequately protective.

You must also certify, as required by § 270.280, that, at the time the Notice of Intent is submitted, that the facility is in compliance with the requirements of part 267, or in the case of a new facility, that the facility will comply with the part 267 requirements when the facility is built and operated. (The proposed rule did not specifically contain a provision to allow the generator to submit the Notice of Intent for new facilities, that are designed, but built later. We believe that such a provision is appropriate and are adding such a provision to the final rule, at § 270.280(a)(1)(ii). In addition to certifying compliance, a compliance audit must be completed. This audit is a systematic, documented, and objective review of the facility's operations and practices related to meeting environmental requirements, in order to assess the compliance status prior to submitting the Notice of Intent. The audit results must be included in an Audit Report with the compliance certification as supporting documentation to the Notice of Intent.

Regarding compliance audits, several commenters argued that we should not require audits at all, because doing so might unnecessarily burden facilities. Several commenters supported the need for conducting the audit, noting that doing so helped ensure compliance with the regulations and familiarity with facility operations. Other commenters argued that facilities be allowed to perform self-audits, and not be limited to conducting independent, third-party audits. Another commenter, arguing for only third-party audits, believed that some owners or operators of TSDs subject to this rule do not have the expertise to adequately audit their facility's operations. While we appreciate the comments, we believe that compliance audits are an integral part of the standardized permitting process, serving to help ensure that a facility is complying with the applicable requirements. Compliance audits are intended to support the self-certification process, and should not unnecessarily burden facilities. While there may be some owners/operators who lack the expertise to conduct audits we believe it unnecessary to require that only third parties conduct audits, because many facility owners are familiar with, and have the expertise to audit their operations. We did not include specific regulatory provisions detailing how facilities must conduct compliance audits in the final rule, but provided general information and web links to guidance materials for conducting audits. (see Section V.B.3). In addition, the final rule does require that the auditor sign and certify that the audit report is accurate, prior to submitting to the Director with the Notice of Intent, which provides an additional safeguard.

Another commenter said the proposal was not clear on how existing facilities would comply with the part 267 standards if a permit is issued. In the RCRA permit program, terms of how a facility will comply with the permit, once a permit is issued, are specified in the permit. This will continue to be the case for standardized permits—the uniform portion of the permit will contain the requirements as specified by part 267, and the supplemental portion will provide site specific standards, as needed.

Another commenter argued that the Notice of Intent and supporting documents submission will potentially strain RCRA enforcement resources, as focus is directed to confirm the adequacy of audits and certifications provided by the permit applicant. While it is foreseeable that some additional effort will likely be placed on the Agency's enforcement resources, we believe that the units eligible for a standardized permit involve rather straightforward conditions.

2. How Do I Switch From an Individual Permit to a Standardized Permit?

Switching from an individual permit to a standardized permit could involve a few scenarios. In general, and the most likely case, is where a facility's units are all eligible for the standardized permit. In this case, you could request the Director of the regulatory agency to revoke your individual permit and issue a standardized permit. For facilities where only some of the units are eligible for a standardized permit, you could request the Director to modify the original permit to no longer include those units, and issue a standardized permit for those units. The revocation and reissuance procedures are in § 124.203, as allowed by § 270.41, and are finalized as proposed.

One commenter, while supportive of allowing facilities to switch to a standardized permit for eligible activities while keeping other activities under an individual permit, believed that revocation and reissuance should not be the required procedure to accomplish this. The commenter suggested that the facility should only need to submit a Notice of Intent for the standardized permit operations and, in addition, a conforming modification to the existing permit. We agree with the commenter that submission of the Notice of Intent along with a modification can work in many instances (modification, revocation, and reissuance procedures appear in today's rule at § 124.5). Another commenter argued that a newly permitted facility should not be able to have their permit revoked, and a standardized permit issued, until the term of the existing permit comes to an end. Otherwise, allowing the revocation might be overly burdensome to states. While we agree that there may be some instances where switching to a standardized permit may be challenging to States, we also do not want to burden facilities who are eligible for a standardized permit. In any event, States, who for the most part implement the permitting program, will

decide at what point they will allow facilities to switch from the individual permit to the standardized permit.

B. Issuing a Standardized Permit

1. How Would You as the Regulatory Agency Prepare a Draft Standardized Permit?

Under the final rule, three steps are involved in preparing a draft permit. Step one is for you (as the regulatory agency) to review the Notice of Intent and supporting information and determine if the facility is eligible for a standardized permit. Second, you would tentatively decide whether to grant or deny coverage under the standardized permit. If a decision is made to grant coverage, the draft standardized permit would propose appropriate terms and conditions, if any, to include in the supplemental portion of the permit. Lastly, you would prepare your draft permit decision within 120 days after receiving the Notice of Intent and supporting information. If necessary, a one time 30-day extension is permitted for review of the information, and preparation of the draft permit. Such extensions might be appropriate in cases involving site specific situations requiring more review. We received comments regarding time periods for an extension, from no extension to 180 days. We have decided to limit the extension to 30 days since we believe that due to the nature of the types of units that are eligible for the standardized permit—containers, tanks, and containment buildings, that a one-time 30 day extension should be all that is necessary.

a. Drafting Terms and Conditions for the Supplemental Portion

As noted previously, the supplemental portion of the standardized permit would include any additional provisions that are deemed necessary to protect human health and the environment and would be issued based on the regulatory agency's specific determination of the conditions at the particular facility. If you, as the Director of the regulatory agency, decide to grant coverage under the standardized permit, you must determine whether supplemental conditions are appropriate or necessary and if so, tentatively identify appropriate facility-specific conditions to impose in the supplemental portion of the standardized permit, and include those conditions as part of the draft permit. These proposed facility-specific conditions would go beyond the standard conditions in the uniform portion of the standardized permit. (The uniform portion of the permit includes standards based on the applicable part 267 requirements.) The supplemental terms and conditions would be those you deem necessary for corrective action purposes, or to ensure protection of human health and the environment. We expect that the need to have supplemental conditions, beyond corrective action requirements, will not be a common occurrence. The authority to impose corrective action conditions is found in RCRA section 3004(u) and (v), as well as EPA's implementing regulations at 40 CFR 267.101, and authority to impose conditions for protection of human health and the environment is found at RCRA section 3005(c)(3), as well as EPA's implementing regulations at 40 CFR 270.32(b)(2).

One commenter noted that it was unclear how the regulatory authority would obtain site-specific information in developing permit conditions. It should be noted that § 270.10(k) allows the Director to require the submission of such information as necessary to establish permit conditions. In addition, information from the public meeting and inspections could be the basis to help develop permit conditions, as appropriate.

Another commenter supported the idea suggested in the preamble that a facility owner or operator should be allowed to ''suggest supplemental conditions that he/she would like the responsible regulatory agency to attach to the standardized permit,'' and suggested regulatory language to specifically allow that provision. While we certainly support allowing facilities to submit suggested conditions, we do not believe it necessary to specifically include that in the regulations, as it could confuse some permit applicants about what is actually required. If a particular owner/operator wants to suggest that supplemental conditions be included in their standardized permit, they are free to do so in the Notice of Intent.

b. Denying Coverage Under the Standardized Permit

The provisions of § 124.206 for denying coverage under a standardized permit are finalized as proposed. Specifically, under the final rule, the Director could tentatively deny a facility coverage under the standardized permit. Reasons for denial could include failure of the facility owner or operator to submit all the information required under § 270.275, or that the facility does not meet the eligibility requirements for a standardized permit (that is, the facility's activities are outside the scope of the permit). The Director could also deny coverage based on a facility's compliance history (see § 124.204(b)).

Instances of poor compliance history exists where previous violations by a facility establish a pattern of disregard of environmental requirements under RCRA or other environmental statutes. Some of the factors used to evaluate a facility's compliance history may include:

—Number of previous violations
—Seriousness of previous violations
—The facility's response with regard to correction of the problem (*e.g.,* how quickly the facility achieved compliance)

Consideration of compliance history reflects the self-implementing nature of the requirements that are being imposed under the uniform portion of the standardized permit. A facility with a demonstrated history of noncompliance may not be a viable candidate for a standardized permit. Beyond these points, we believe it is difficult to develop specific criteria defining ''poor'' compliance history. We believe that the permitting authority is in the best position to determine whether or not a facility has a compliance history that is so poor as to determine that they should be ineligible for a standardized permit.

A number of commenters believe that the regulations should be clearer on the criteria for denying coverage under the standardized permit, and offered suggested situations that could weigh heavily in deciding whether or not to deny a facility from receiving a standardized permit. Among the reasons suggested for denial included a facility's demonstrated history of non-compliance with regulations or permit conditions, demonstrated history of submitting incomplete or deficient permit applications, and that the facility does not meet the criteria of eligibility in § 124.201.

The suggested reasons are consistent with our intent to limit the eligibility for the standardized permit to those facilities that can demonstrate, or have demonstrated, an ability to adhere to the regulations, as we discussed in the preamble to the proposed rule (see 66 FR 52203, Section IV.B.2). Section 124.204(b) provides specific eligibility criteria. Under 124.204(b)(2)(iv), you may consider the facility's compliance history, in cases where the facility is operating under RCRA interim status, or has an existing permit and is choosing to convert to a standardized permit. Poor compliance history could indicate a facility that might more appropriately

be served by an individual permit, or, of course, permit denial if warranted.

c. Preparing the Draft Permit Decision

Under § 124.204(c), the Director needs to make a draft permit decision within 120 days of receiving the Notice of Intent and supporting information. In addition, we are allowing a one time 30-day extension. The original proposal called for a draft permit decision within 120 days, and requested comment on whether additional time should be allowed. Several commenters agreed with the proposal that 120 days is sufficient time to review the information submitted with the Notice of Intent. However, other commenters have argued that the initial 120-day period would not be adequate time to review all the information submitted and conduct the required public comment period. Suggested extensions ranged from those who suggested no extension, all the way up to 180 days suggested by one commenter. We understand that some states have additional requirements that permit applicants must meet, that may necessitate an extension. However, we believe that most submissions should be reviewable in the 120-day time frame. Furthermore, under the standardized permit rule, the public comment period begins once the draft permit is public noticed, and is not part of the 120-day review period.

Nevertheless, there may be situations where additional time is needed, for example, to work out a particular approach to an issue requiring a supplemental condition. For these facilities, and in response to comments, the Agency is providing a one-time extension of 30 days. We believe that the 120-day initial time period, with a one time 30-day extension will provide sufficient time to issue a draft permit (or permit denial).

2. How Does the Regulatory Agency Prepare a Final Standardized Permit?

After the close of the public comment period, the Director would make a final determination on the draft permit decision (*i.e.*, whether to grant or deny coverage for a facility to operate under the standardized permit). The Director would use the same procedures to finalize a draft standardized permit as he or she would use to finalize a draft individual permit, found in § 124.15. Commenters supported this provision of the rule; therefore, § 124.205 for preparing a final permit decision is finalized, as proposed.

C. Public Involvement in the Standardized Permit Process

Public involvement begins early in the standardized permitting process, starting with the public meeting that must occur prior to submission of the Notice of Intent. This meeting is described in more detail in preamble section III.A.1.a.

1. Requirements for Public Notices

The provisions of § 124.207 require the Director to issue a public notice announcing the draft permit decision. The procedures and time periods for public comment are the same as for commenting on draft individual permits. Because we received no significant comment, we are finalizing § 124.207 as proposed.

2. Opportunities for Public Comments and Hearings

The provisions for the comment period and hearings are found in § 124.208. Because we received no significant comment, we are finalizing § 124.208 as proposed.

3. Responding to Comments

The requirements for responding to comments are found in § 124.209. Because we received no significant comment, we are finalizing § 124.209 as proposed.

4. Appealing a Final Permit Decision

Under today's final rule, according to § 124.210, you may appeal the final permit decision to the Environmental Appeals Board within 30 days. You may appeal the permit, including any terms and conditions in the supplemental portion, but only after the final determination is made. At that time, you may also appeal the eligibility of the facility for the standardized permit. (For example, you may challenge whether a unit is a tank.) You may not appeal the terms and conditions of the uniform portion of the standardized permit.

One commenter noted that appealing the supplemental portion of the permit might call into question whether the facility can still operate safely under the unappealed portion of the permit. Just as occurs in the current regulatory process, if an appealed section of the permit is required for safe management of hazardous waste in that unit, then waste cannot be managed in the unit until the appeal has been adjudicated. See 40 CFR 124.16(a). For a standardized permit, if the supplemental portion of the permit is necessary for safe waste management, and that part of the permit is appealed, then waste may not be managed in the unit until the appeal is resolved. However, if the appealed supplemental portion of the permit deals with SWMU corrective action issues, then safe waste management in the eligible units can likely occur. More directly stated, if the appealed parts of the permit are unrelated to the units eligible for the standardized permit, then safe waste management in those eligible units can likely occur.

D. Maintaining a Standardized Permit

This portion of the preamble discusses what is being finalized today regarding how your standardized permit is modified over time to reflect changes in the facility's design or operations. While the rule provides a mechanism for making changes to standardized permits, we envision that few changes to the actual permit would likely be necessary. This is because standardized permits contain standard conditions based on the requirements of Part 267, and that many changes at the facility would only affect the information kept on-site and not the actual permit. The only thing that would have to be modified, typically, would be supplemental conditions that are unique to the facility. However, when changes to the standardized permit are necessary, they will fall into the categories described below.

1. What Types of Changes Could Owners or Operators Make?

The proposed rule set forth two categories of modifications, routine and significant, for making changes to standardized permits. Routine changes included those changes that, under an individual permit situation, would be classified as either a class 1 or class 2 modification under § 270.42 appendix I, while significant changes included those changes that would have been class 3 modifications. The final rule modifies the routine changes category originally proposed, and adds a third category, routine changes requiring prior approval. The actual procedures for performing routine and significant changes are finalized, as proposed; the only change made is to allow routine changes requiring prior agency approval, as described below.

Several commenters argued that some class 2 modifications are more like class 3 modifications, and should not be considered as routine changes under a standardized permit, but as significant changes. Furthermore, because some class 1 modifications require prior approval under an individual permit, those changes should be treated similarly under a standardized permit. For example, several commenters noted that changes in ownership should not

simply be a routine change under the standardized permit rule, but should require prior approval from the regulatory agency, because of financial assurance and compliance history concerns about a new owner.

Under the original proposed rule, ''routine changes'' encompassed both class 1 and class 2 modifications, leaving class 3 modifications to be addressed as ''significant changes.'' We agree with commenters to the extent that some changes to standardized permits should require prior approval, especially changes that would require prior approval under individual permitting.

Therefore, the final rule adds a third category of changes to permits, ''routine changes with prior approval.'' (See the next section for a description of the types of modifications that would fall into the various categories.) The addition of another category between ''routine'' and ''significant'' should help address the concern that some class 2 modifications are more like class 3 modifications and should be treated as significant changes, because now all class 2 modifications will require prior approval under the standardized permit. Rather than class 2 modifications being a ''routine change'' as described in the proposed rule, class 2 modifications will now require prior approval, as will class 1 modifications normally requiring prior approval.

While we are adding a third category, the overall permit change process is more streamlined than the existing modification process. The new category—''routine with prior approval''—would not involve a public comment or hearing process, as would be the case with regular class 2 modifications, but would require a notification to, and acknowledgment and approval from the regulatory authority, and also, within 90 calendar days of the approval, notification to the facility's mailing list. The Director would need to respond within 90 days of receiving the modification request, either approving or denying the request.

2. What Are the Definitions of Routine Changes, Routine Changes With Prior Agency Approval, and Significant Changes, and What Are the Requirements for Making Those Changes?

a. Routine Changes

Routine changes are any changes that qualify as a class 1 modification under 40 CFR 270.42 Appendix I that do not require prior approval by the regulatory authority. The requirements for making routine changes are found at § 124.212. The procedures for making routine changes are described in the preamble of the proposed rule at 66 FR 52206 (Section VI.C). Basically, these procedures allow routine changes to be made without notifying the regulatory authority, as long as those changes do not amend any of the information that was originally submitted under § 270.275 during the standardized permit application process. If the change amends the information provided under § 270.275, then the revised information must be provided to the Director, the facility mailing list, and to state and local governments, as described in § 124.212(b)(1) and (2).

b. Routine Changes With Prior Agency Approval

Routine changes with prior agency approval are changes that, according to 40 CFR 270.42 Appendix I, either qualify as class 1 modifications requiring prior agency approval, or as class 2 modifications. The requirements for making routine changes with prior agency approval are found at § 124.213. The procedures for making changes with prior approval include the same steps that must be followed for making changes that amend the information submitted under § 270.275 (see § 124.212(b)(1) and (2)), and also require approval from the Director.

c. Significant Changes

Significant changes are any changes that qualify as: (1) Class 3 permit modifications under 40 CFR 270.42 Appendix I, (2) any changes not specifically identified in Appendix I, or (3) any changes that amend the terms or conditions in the supplemental portion of the standardized permit. The requirements for making significant changes are found at § 124.214. The procedures for making significant changes to the standardized permit are very similar to the initial standardized permitting process, and is described in the preamble of the proposed rule at 66 FR 52206 (Section VI.D), and are finalized, as proposed.

3. How Do I Renew a Standardized Permit?

The process to renew a standardized permit is the same as for renewing an individual permit. See §§ 270.11(h) and 270.30(b). To renew a standardized permit, you would follow the same procedures as you would to initially obtain coverage under the standardized permit (those in 40 CFR part 124 subpart G). We did not receive any significant comment regarding the process of renewing a standardized permit, and therefore, are finalizing this section, as proposed.

IV. Section by Section Analysis and Response to Comments for the Part 267 Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit

A. Overview

Most of the proposed part 267 requirements have been finalized, as proposed, with few exceptions, which are discussed later in this section. The requirements in part 267 form the basis for the uniform portion of the standardized permit, which is a required part of all standardized permits.

Some commenters argued that the standardized permit rule only adds another set of regulations, and thus, adds to the difficulty of keeping track of the various permits. We acknowledge this rule does add another set of regulations to the CFR. However, these regulations replace the existing technical regulations (part 264) that already apply to tanks, containers, and containment buildings, which these facilities are already subject to. Thus, we would disagree with the commenter that all we are doing is subjecting these units to additional regulation. Moreover, as stated previously, we believe that this rule will help streamline the permitting process, saving time and resources for both the facility and the regulatory agency, while maintaining protection of human health and the environment.

B. Subpart A—General

1. Purpose, Scope, and Applicability

The final rule sets forth the minimum national standards for facilities managing wastes under a standardized permit. The final part 267 standards apply to owners and operators who store or non-thermally treat their wastes on-site in tanks, containers, and containment buildings, and to facilities that manage wastes generated off-site, by a generator under the same ownership as the receiving facility. Based on comments, there appeared to be some confusion on whether facilities with thermal treatment units could apply for a standardized permit for their eligible units in which non-thermal treatment or storage is being conducted. A facility may apply for a standardized permit for its eligible units, regardless of what other hazardous waste management is occurring at the facility. For example, a hazardous waste incineration facility that conducts tank storage for wastes generated on site may apply for a standardized permit for the tank storage. Except for a clarifying

correction to the part 270 reference (subpart J rather than subpart I), the language of § 267.1 is finalized, as proposed.

2. Relationship to Interim Status Standards

The final § 267.2 provisions are similar to the § 264.3 provisions. If you are currently complying with the requirements for interim status, you will need to continue to comply with the interim status standards specified in part 265 until final disposition of your standardized permit application. We received no significant comments on this section. Thus, the § 267.2 requirements are finalized, as proposed.

3. Imminent Hazard Action

The final § 267.3 provisions repeats the current § 264.4 provisions concerning imminent and substantial hazards. We received no significant comments on this section, and therefore, are finalizing these provisions, as proposed.

C. Subpart B—General Facility Standards

These standards are similar to the general facility standards currently found in 40 CFR part 264 subpart B. These standards describe how to obtain an EPA identification number, requirements for waste analysis, security requirements, inspection schedules, employee training, managing ignitable, reactive or incompatible wastes, and location standards.

1. Applicability

The applicability language in § 267.10 is finalized, as proposed, except for the change in the reference to subpart I to subpart J, of part 267. The reason for this change is editorial. No significant comments were received on this section. The purpose of part 267 is to establish minimum national standards for facilities managing waste under a standardized permit, and as such would apply to owners and operators of facilities who non-thermally treat and/or store hazardous waste on-site in tanks, containers, and/or containment buildings, as well as facilities that receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility and who store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

2. How Do I Comply With This Subpart?

Section 267.11 lists the steps you need to take if the subpart applies to you. Specifically, you would obtain an EPA identification number, and follow prescribed requirements for waste analysis, security, inspections, training, special waste handling and location standards. We are finalizing § 267.11, as proposed, because no substantive comments were received on this section.

3. How Do I Obtain an EPA Identification Number?

Section 267.12 generally repeats the requirement currently in § 264.11 with the addition of whom to contact for information. No significant comments were received on this section, and thus, we are finalizing this provision, as proposed.

4. What Are the Waste Analysis Requirements?

The provisions of § 267.13 are finalized and include a change related to eligible off-site facilities. These provisions generally require owners and operators to prepare a waste analysis plan and keep it on-site at their facility. Eligible facilities that receive wastes generated off-site must submit a waste analysis plan with their Notice of Intent, as well as retain the plan on-site.

Several commenters expressed the need for submission and approval of waste analysis plans, particularly if the rule was extended to include off-site facilities. Because we are extending the rule to certain off-site facilities, as described previously, we are requiring those facilities to submit a waste analysis plan with the Notice of Intent. Most commenters addressing waste analysis plans supported the idea that on-site facilities would not need to submit waste analysis plans. Therefore, we are not requiring on-site facilities to submit waste analysis plans with the Notice of Intent. (See the discussions of on-site versus off-site in section II.D, and on waste analysis plans in section III.A.1.b of this preamble.)

A number of commenters discussed the importance of waste analysis plans. DOE noted that a key aspect of the acceptability of this approach [extending the rule to eligible offsites] would be the proper design and implementation of waste analysis requirements to ensure the compatibility of wastes from multiple off-site sources that are stored and treated together. For example, at least one DOE site that receives waste from off-site believes it has as much knowledge and confidence in the compatibility of the off-site wastes as it has for waste generated on-site, because of its approach to waste analysis.

DOE also noted that ''to verify that acceptable waste analysis requirements are in place at a facility managing waste from off-site, they suggest that EPA require the facility to submit a waste analysis plan with the Notice of Intent to operate under a standardized permit.

One commenter noted that where a facility has numerous processes contributing hazardous waste to a storage or treatment unit, the waste analysis plan would be significantly more complex. In this case, it may be prudent to submit the waste analysis plan with the initial notification to ensure that waste management procedures are adequately protective.

Based on these comments and the need they expressed to have adequate knowledge of wastes being received from off-site, we are requiring that waste analysis plans be submitted to the regulatory agency with the Notice of Intent. Multiple facilities under the same owner may be in different states, and may have variations in their waste streams. States should have waste analysis information concerning wastes generated in facilities located in other states in deciding whether the facility should receive a standardized permit, and in ensuring that waste analysis at the receiving facility will be sufficient to protect human health and the environment.

5. What Are the Security Requirements?

The § 267.14 security provisions are similar to the § 264.14 provisions. The proposal in § 267.14(a) and (b) provided for an exemption from the security provisions by requiring a certification that both of the conditions in § 267.14(a) are met. While several commenters supported the exemption in the proposal, most of the commenters believed that the proposed security provisions are reasonable, and that there is no reason for an exemption from those provisions. If, for example, a facility wants consideration for an exemption due to site-specific conditions, such a facility might likely be a better candidate for an individual permit, than for a standardized permit. Commenters also noted that the conditions for the exemption are rarely met.

Based on the comments submitted and upon reflection of the Agency's overall goal in issuing the standardized permit rule, we believe that having an exemption provision would add to the complexity of what is intended to be a streamlined permit process. If allowed, the exemption would require review and approval stages, adding to the time necessary for issuance of a draft permit. Therefore, the final rule does not include the exemption proposed in § 267.14(a), and the remaining language in § 267.14 has been edited accordingly.

6. What Are the Inspection Schedule Requirements?

The § 267.15 inspection schedule requirements are finalized, as proposed. No significant comments were received on this section.

7. What Are the Training Requirements?

The § 267.16 training requirements are essentially the same as the training standards in § 264.16, and are finalized, as proposed. No significant comments were received on this section. Owners/operators will be required to keep a description of the training program and individual personnel training logs with other required records at their facility.

8. What Are the Requirements for Managing Ignitable, Reactive, or Incompatible Waste?

The general requirements of § 267.17 for managing ignitable, reactive, or incompatible waste are very similar to the requirements found in § 264.17, and are finalized, as proposed. No significant comments were received on this section. These general requirements minimize the potential for accidents when handling ignitable or reactive wastes, or when mixing incompatible wastes.

9. What Are the Location Standards?

The § 267.18 location standards are similar to the requirements found in § 264.18, except that today's final rule does not provide for a waiver from the 100-year floodplain restriction, based on the ability to remove the waste.

Most commenters agreed with the Agency that we should not allow a waiver from the location requirements that prohibit locating a facility in a 100-year floodplain, if wastes can be removed before flood waters reach the facility. Commenters provided similar arguments to those regarding the exemption from the security provisions. Moreover, they argued that if a facility believes, based on site-specific conditions, that they should be eligible for a waiver, that the facility would likely be better suited for an individual permit. We agree with these commenters.

However, some commenters argued that the waiver provision should be available for siting a facility in the 100-year floodplain in order to maximize regulatory relief. We disagree. Similar to our reasons for not having an exemption from the security provisions of § 267.14, we believe that having a waiver from the location standards would only add to the complexity of what is intended to be a streamlined permit process. If allowed, waivers would require review and approval stages, adding to the time necessary for issuance of a draft permit, which detracts from the intent of permit streamlining. Therefore, we are not providing for a waiver from the floodplain location standards in the final rule.

D. Subpart C—Preparedness and Prevention

This subpart requires you as the owner or operator to minimize threats to human health and the environment caused by the release of waste from unplanned events.

1. What Are the Design and Operation Standards?

The requirements of § 267.31 are the same as those found in § 264.31, and include requirements on how to design, construct, maintain and operate your facility to minimize threats to human health and the environment. No significant comments were received on this section. Therefore, we are finalizing the requirements, as proposed.

2. What Equipment Am I Required To Have?

Section 267.32 equipment requirements are finalized, as proposed. This section requires you to have certain equipment at the facility, including an alarm system, communication equipment, fire extinguishers and fire control equipment, and either water at adequate volume and pressure to supply hose streams, foam equipment, or water spray systems. The section also provides an exemption for certain equipment, otherwise required, if the potential hazards at the facility don't warrant the equipment. To make use of that equipment exemption, you would need to submit a certification and keep documentation supporting the exemption at your facility. This exemption has been retained for two reasons: It avoids unnecessary expenditures, and the exemption does not require approval of a demonstration by the permitting agency. However, you would be required to keep documentation supporting any equipment exemption at the facility and you would make the documentation available for review by the permitting agency and the public. No significant comments were received on this section.

3. What Are the Testing and Maintenance Requirements for Equipment?

Section 267.33 is finalized, as proposed, requiring the testing of all equipment identified in § 267.32. No significant comments were received on this section.

4. What Are the Requirements for Access to Communication Equipment or an Alarm System?

Section 267.34 requires all personnel involved in waste handling to have ready access to communication equipment and alarms. The requirement would not apply when the equipment is not required under § 267.32. No significant comments were received on this section. Therefore, this section is finalized, as proposed.

5. What Are the Requirements for Access for Personnel and Equipment During Emergencies?

Section 267.35 is being finalized with additional language as described below. Specifically, a commenter suggested adding the following language to the end of proposed § 267.35: ''as appropriate considering the type of waste being stored or treated.'' We agree with the suggested change because it acknowledges that certain wastes may not necessarily require spill control or fire equipment access to the area.

6. What Are the Requirements for Arrangements With Local Authorities for Emergencies?

Section 267.36, regarding making arrangements with local entities such as police, fire, and response authorities, is finalized, as proposed. No significant comments were received on this section.

E. Subpart D—Contingency Plans and Emergency Procedures

This subpart contains standards requiring a contingency plan that describes how hazards to human health and the environment will be minimized. These requirements are similar to those in part 264 subpart D with the exception that you are not required to submit the plan with your application.

The following Sections of subpart D are finalized, as proposed, because no significant comments were received.

a. Purpose of the Contingency Plan (§ 267.51)
b. What is Required to be in the Contingency Plan? (§ 267.52)
c. Who is Required to Have Copies of the Contingency Plan? (§ 267.53)
c. Revising the Contingency Plan (§ 267.54)
d. Role of the Emergency Coordinator (§ 267.55)
e. Emergency Procedures for the Emergency Coordinator (§§ 267.56 and 267.57)

F. Subpart E—Manifest System, Record keeping, Reporting, and Notifying

This subpart of part 267 contains the standardized permit manifest system, record keeping, reporting, and notifying

requirements. We changed the name of the heading for subpart E to reflect the applicability of the manifest system requirements in cases involving eligible off-site facilities.

1. When Would I Need To Manifest My Waste?

Today's rule extends eligibility for the standardized permit to certain off-site facilities. Because the proposal only addressed on-site generator facilities, § 267.70 did not include all of the provisions from § 264.71 ''Use of the Manifest System.'' We, therefore, are finalizing today's rule to insert the provisions of § 264.71 into § 267.71, now titled ''Use of the Manifest System,'' and the provisions of § 264.72 into § 267.72, now titled ''Manifest Discrepancies.''

With these insertions, the proposed §§ 267.71 through and 267.74 are renumbered and finalized as follows:

a. Section 267.71 becomes § 267.73 (What Information Must I Keep?);

b. Section 267.72 becomes § 267.74 (Who Sees the Records?);

c. Section 267.73 becomes § 267.75 (What Reports Must I Prepare and to Whom Do I Send Them?); and

d. Section 267.74 becomes § 267.76 (What Notifications Must I Make?).

Because we are extending eligibility to certain off-site facilities, we are adding paragraphs to §§ 267.73 and 267.75 that relate to off-site facilities (*e.g.*, § 267.73(b)(11) and (12) and § 267.75(c) and (d)).

One commentor suggested that a change to include manifest requirements in the final rule be made to allow for off-site facility eligibility. Because we are extending this rule to certain off-site facilities, where an owner/operator manages their own waste generated at several locations, the suggested change to Subpart E was appropriate.

2. What Information Would I Need To Keep?

For similar reasons as with the section on ''when would I need to manifest my waste?,'' proposed § 267.71 was developed with on-site generator facilities only. Because certain off-site facilities are now included, we are adding the applicable provisions from § 264.71 that relate to off-site facilities, into § 267.73.

One commentor noted that there appeared to be some confusion on retention times for records. The retention time for records, unless otherwise noted, is until the facility is closed, as is stated at § 267.73(b).

According to § 267.73(b), records must be retained until the facility is closed. In addition, § 267.74(b) further states this retention period can be extended due to an unresolved enforcement action involving the facility or as requested by the Administrator. For the purpose of clarity, we removed the words ''and how long do I keep them'' from the heading of § 267.74.

3. Who Sees the Records?

Proposed § 267.72 regarding submission of records to the permitting authority is finalized at § 267.74. No significant comments were received on this section.

4. What Reports Do I Need To Prepare and to Whom Would I Need To Send Them?

Because we are finalizing today's rule to extend to certain off-site facilities, we are adding the applicable provisions from § 264.76 (Unmanifested Wastes) to proposed § 267.73, and finalizing that section at § 267.75. No significant comments were received on this section.

5. What Notifications Must I Make?

Proposed § 267.74 is finalized as § 267.76. No significant comments were received on this section.

G. Subpart F—Releases From Solid Waste Management Units

Section 267.101 of the final rule sets forth requirements for corrective action at facilities that obtain standardized permits. These requirements have not been changed from the October 12, 2001 proposed rule.

Section 3004(u) of RCRA provides that all permits issued after November 8, 1984 and under the authority of section 3005 must require corrective action for all releases of hazardous waste or constituents from any solid waste management units (SWMU) at the facility, as necessary to protect human health and the environment (*see also* 40 CFR 264.101). Section 3004(u) requires that schedules of compliance (where corrective action cannot be completed prior to permit issuance) and financial assurances for completing such corrective action be included in the permit. In addition, section 3004(v) directs EPA to require corrective action as necessary to protect human health and the environment beyond the facility boundary, where permission to conduct such corrective action can be obtained. Because standardized permits, like non-standardized permits (*i.e.*, individual permits and permits-by-rule), will be issued under the authority of section 3005 of RCRA, these statutory corrective action requirements extend to standardized permits as well. Section 267.101(b) provides that corrective action provisions will be specified in the supplemental portion of the standardized permit (as necessary to protect human health and the environment). In the October 12, 2001 proposed rule, the Agency did not propose standardized permit conditions for corrective action. The Agency explained that, while it was attempting to streamline the permit application and permit issuance processes by developing generic design and operating standards for storage permits, it had to balance the desire for a streamlined permitting process against the need for flexibility in the corrective action program. The Agency recognized that most sites in the RCRA corrective action universe are unique, and that site-specific determinations for corrective action remedies are vital to assuring the best remedy is selected at each site. The Agency therefore proposed the same site-specific flexibility for corrective action under standardized permits as is available under non-standardized permits. The Agency believed that this approach would provide flexibility to fashion remedies that are protective of human health and the environment and that reflect the conditions and the complexities of each facility. The Agency solicited comment on this approach, but also requested suggestions for standardized corrective action permit conditions.

The Agency received few comments on this proposed approach. While some commenters agreed that site-specific flexibility should be preserved for corrective action, some suggested standard permit conditions that the Agency might adopt.

One commenter suggested that the Agency develop standard permit conditions for presumptive remedies or specified corrective action approaches which could be incorporated into the uniform portion of the standardized permit. Though the Agency agreed that the commenter raised interesting ideas, the Agency did not develop standard permit conditions based on this comment for several reasons. First, the commenter did not provide sufficient detail to develop standard conditions, and developing the suggested standard permit conditions would have required significant effort on the part of the Agency. The Agency did not believe that the level of interest demonstrated by commenters for standard permit conditions for corrective action warranted those efforts. In addition, the Agency did not believe that this rule was an appropriate forum for addressing the type of streamlined approach suggested by the commenter.

Presumptive remedies and generic standards for streamlined approaches to corrective action are based on factors such as type of waste and media requiring cleanup—factors unrelated to the eligibility criteria for standardized permitted facilities. Thus, presumptive remedies and generic standards for streamlined approaches to corrective action are program-wide issues that the Agency believes are better addressed in other forums.

Another commenter suggested that standardized permits should contain several standard permit conditions, at a minimum, including notification requirements for, and assessment of, newly identified solid waste management units, areas of concern, and newly identified releases; content requirements for workplans and reports; approval procedures for workplans and reports; and approval procedures for final remedies. The Agency did not develop standard permit conditions in response to this comment. As was the case with the first commenter, this commenter did not provide the detail that would have been necessary to develop standard permit conditions. Further, the process-oriented permit conditions suggested by the commenter would have been inconsistent with the Agency's approach to implementation of the corrective action program. Since the time of the proposal, the Agency has continued to move away from a process-oriented corrective action approach toward a results-based strategy for corrective action. In September, 2003, the Agency issued guidance entitled ''Results-Based Approaches and Tailored Oversight Guidance,'' which encouraged the use, where appropriate, of results-based approaches to corrective action. As described in the guidance, results-based approaches emphasize outcomes, or results, in cleaning up releases, and strives to tailor process requirements to the characteristics of the specific corrective action. The Agency believes that development of the standard permit conditions for corrective action as suggested by the commenter would not be consistent with a results-based approach.

The Agency believes that the better approach is to continue to allow regulators the flexibility to develop permit conditions based on the conditions at the site. Thus, § 267.101(b) provides that provisions (or schedules of compliance) for corrective action will be specified in the supplemental portion of a standardized permit, and § 267.101(c) provides for corrective action beyond the facility boundary. These paragraphs impose requirements for corrective action at facilities that receive standardized permits that are identical to those requirements imposed by § 264.101 at facilities that receive non-standardized permits.

In the proposed rule (*see* 66 FR 52191), the Agency also solicited comment on how cleanups under cleanup programs other than the authorized RCRA program (or under ''alternate authorities'') might be addressed in RCRA permits, including facilities with standardized permits. The Agency identified two approaches that might be used to address an alternate cleanup authority in a RCRA permit—the approaches were referred to as ''postponement'' and ''deferral.'' Under the postponement approach, the permitting authority would postpone the determination of RCRA-specific corrective action provisions until a cleanup under an alternate State authority is completed. Under the deferral approach, the permitting authority would make a determination that corrective action is necessary, and that the appropriate corrective action at the site would be the state action run by the state alternate program. The Agency requested comment on the postponement and deferral approaches as part of its ongoing effort to determine how to effectively utilize alternate authorities to address corrective action needs at RCRA facilities.

The Agency is not taking final action in this final rule with respect to the issues raised regarding alternate authorities. The Agency does note, however, that since the time of the proposed rule, the Agency has continued, outside of the context of this rulemaking, to support the appropriate use at specific sites of alternate authorities to address RCRA corrective action, not only at permitted facilities, but at other RCRA facilities as well.[3] The Agency plans to address issues and options related to the use of alternate authorities discussed in the proposal, including how to address alternate authorities in RCRA permits, outside of the context of this rulemaking.[4]

H. Subpart G—Closure

1. Does This Subpart Apply to Me?

The language of § 267.110 is finalized, as proposed, since no significant comments were received on this section. You are subject to the requirements of subpart G if you own or operate a facility treating or storing hazardous waste under a standardized permit.

2. What General Standards Must I Meet When I Stop Operating the Unit?

The language of § 267.111 has been modified to further reinforce that facilities under a standardized permit must clean close. If a facility under a standardized permit cannot clean close, then the owner/operator of the facility must pursue post-closure options.

3. What Procedures Must I Follow?

As discussed below, § 267.112 has been revised to require that the closure plan be submitted with the Notice of Intent, instead of 180 days prior to closure, as proposed. The closure plan, as part of the permit, would be approved with final permit issuance.

The Agency requested comments on several aspects of the closure plan in the proposed rule. Specifically, while the Agency proposed to require that the closure plan be submitted at least 180 days prior to closure, we also requested comment on whether the closure plan should be submitted with the Notice of Intent; not allowing the option to close as a landfill and therefore require clean closure of the units addressed in the standardized permit; and not allowing time extensions for closure. We also requested comments and suggestions for procedures to be followed in the event that you do not know that you are to receive the final volume of hazardous waste until you are within the 180 day period, and proposed options for that occurrence. Finally, we invited comment on an option of not requiring a closure plan, but, instead, including closure conditions in the standardized permit. Our response to these comments are addressed in this section of the preamble and in the Response to Comments document.

The majority of the comments received supported a requirement that the closure plan be submitted with the Notice of Intent. Those who favored the closure plan being submitted with the Notice of Intent argued that early submittal of the closure plan would be more protective of human health and the environment because it would allow for better cost estimates, would allow for early negotiation of closure conditions, and would avoid the problem of meeting time frames within the 180-day window. Moreover, as noted previously, requiring the plan up front would allow the regulatory authority to review the plan and assure the regulatory authority of the owner/operator's ability to complete closure. Early submission of a closure plan would also help support closure cost

[3] Alternate authorities are utilized at RCRA facilities in most States. These authorities include a variety of cleanup programs, including voluntary programs and state superfund-type programs.

[4] It should be noted that since issues related to use of alternate authorities are not addressed in this final rule, the Agency did not respond to comments related to those issues.

estimate figures. Finally, the revision would allow the public to review the plan during the public comment period for the publicly noticed permit. Consequently, we agree that it would be more appropriate to require that the closure plan be submitted with the Notice of Intent and have modified the rule accordingly.

With this change to require closure plan submissions with the Notice of Intent, we have modified the proposed § 267.112(c) language to account for changes to the facility requiring a change to the closure plan. These changes may include, but are not limited to, changes in the operating plan, facility design, change in the year of closure, and unexpected events. These conditions were not relevant in the proposed rule where the closure plan was not required until 180 days prior to closure.

4. Will the Public Have the Opportunity To Comment on the Plan?

Based on the changes discussed in the previous section, the public will have an opportunity to review the closure plan during the public comment period that occurs once the draft permit is public noticed.

5. What Happens if the Plan Is Not Approved?

Because of the change made to require that the closure plan be submitted with the Notice of Intent, § 267.114 is no longer appropriate and thus, is not included in the final rule. The plans are considered approved when the final permit is issued, becoming part of the permit. If the plan is not acceptable, then the standardized permit will not be issued.

6. After I Stop Operating, How Long Until I Must Close?

The proposed rule required that closure begin within 30 days after the facility received its final volume of hazardous waste, and that clean closure be completed within 180 days after receiving the final volume of waste, with no time extensions. (The rule intends that eligible units should be able to clean close.) Our rationale for requiring clean closure of the units subject to the standardized permit was to reduce the likelihood of any unforeseen circumstances and thus, it would be unlikely that closure would take longer than 180 days. Nevertheless, in the proposal, we invited comments on the need for extending the closure time period to allow for more time to clean close.

Most commenters agree with the Agency that, in most cases, 180 days is an adequate amount of time to clean close container units, tank storage units, and containment buildings. However, commenters also believed it appropriate (and necessary) to include a provision in the final rule that would allow for an extension for circumstances beyond the control of the owner/operator.

Based on these comments and the Agency's experience in implementing the hazardous waste program, we agree with the commenters that a provision should be included in the final rule that would allow a one-time extension for circumstances beyond the control of the owner/operator. Therefore, we are including a provision in the final regulations at § 267.115 to allow for a one-time extension of 180 days to the time allowed to clean close to address circumstances beyond the control of the owner/operator. In cases where closure is expected to take more time, the facility will be required to use post-closure options to close.

7. What Must I Do With Contaminated Equipment, Structures, and Soils?

The language of § 267.116 is finalized, as proposed. No comments were received on this section.

8. How Do I Certify Closure?

The language of § 267.117 is finalized, as proposed. No comments were received on this section.

I. Subpart H—Financial Requirements

Much of the regulatory language in this final rule uses a format of questions and answers that refers to the permittee as ''you'' and to EPA as ''we.'' Except for the introduction to the regulations (§ 267.140), the language in Subpart H does not follow the question and answer format, and it does not use these first and second person pronouns to identify the subject. There are two main reasons for this difference. First, the underlying current financial responsibility regulations in subpart H of 40 CFR parts 264 and 265, which remain integral to the proposed part 267 regulations, do not use first and second person pronouns, and EPA has not rewritten the existing part 264 and 265 regulations to conform to the question and answer format. The regulations here cross reference the existing part 264 regulations extensively, and often provide that compliance with an existing part 264 provision would constitute compliance with proposed part 267. This linkage of the regulations is necessary so that firms with facilities under both existing part 264 (or part 265 regulations) and proposed part 267 could use the same mechanism for more than one facility, thus eliminating the expense of a separate mechanism. EPA expects that several firms using the proposed standardized permit could have other facilities operating under existing part 265 interim status or part 264 permitting standards.

Second, unlike many other permitting regulations, the responsibilities in the financial assurance regulations often extend to parties in addition to EPA (or the state permitting agency) and the permittee. For example, a trustee agrees to perform certain functions as part of a trust agreement where EPA is the beneficiary, but EPA is not a signatory. Third, parties must fulfill their responsibilities in accordance with, and the language used for the documents often must conform to, specific industry standards such as the Uniform Commercial Code. Because third parties are integral to the operation of the financial responsibility regulations, EPA has not issued regulatory language based upon first and second person subjects.

1. Who must comply with this subpart and briefly what must they do? The financial responsibility requirements for the standardized permit largely mirror the provisions found currently in 40 CFR part 264 subpart H. As discussed more fully below, the major differences involve the pay-in period for a trust for a new facility, and the adoption of a financial test that differs from the current financial test under 40 CFR part 264 subpart H. Both of these provisions were included in the proposal. Under § 267.140, you must comply with these regulations if you are the owner or operator of a facility that treats or stores waste under a standardized permit, except as provided under § 267.1(b), and § 267.140(d) which, like current part 264 subpart H, exempts the States and the Federal government from the requirements of this subpart. If you are subject to these regulations, you must prepare a closure cost estimate, demonstrate financial assurance for closure, and demonstrate financial assurance for liability. You must also notify the Regional Administrator if you are named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code.

2. Definitions. The definitions and terms in § 267.141 largely follow those currently used in § 264.141. As discussed below, the proposed regulatory text included, as a method of complying with the financial assurance requirements, a financial test that reflected the test that EPA had proposed for other hazardous waste TSDFs. Because this proposed test did not use some of the terms in the part 264 financial test, EPA omitted those

definitions from proposed part 267. For the standardized permit rule, EPA has adopted the financial tests that were contained in the proposal and so the definitions that were omitted from the proposal are again omitted from the final text of § 267.141.

3. Closure cost estimates. For traditional permits, the closure plan forms one of the bases for estimating closure costs. However, under the proposed rule, the holder of a standardized permit would not have had to prepare a closure plan until 180 days before closure. Therefore, EPA developed proposed regulatory language that could accommodate this difference. As previously discussed, many commenters objected to this provision (in part because of the difficulty of developing precise cost estimates in the absence of a closure plan) and so in the final rule, EPA has required that the closure plan be submitted with the Notice of Intent and be approved before the issuance of the standardized permit. (See section H. Subpart G, Closure preceding this section for further discussion of this issue.) Because approval of the closure plan is now required before the issuance of the standardized permit, the closure cost estimating requirements can be and are the same as for holders of individual permits. Thus, the regulatory language that was included in the proposal that would have accommodated the difference between proposed § 267.142(a)(1), (2), and (5) and the current part 264 subpart H has been removed from the final rule, and a new § 267.142(c) added. Under § 270.275(i), a copy of the closure cost estimate must be submitted with the Notice of Intent. This is consistent with the requirement for other permits in § 270.14(b)(15).

As under the requirements for other permitted facilities, you must develop and keep at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the closure requirements of §§ 267.111 through 267.117, and applicable closure requirements in §§ 267.176, 267.201, and 267.1108. As under the requirements for facilities operating under individual permits, you must base these cost estimates upon a closure plan. Under § 267.142(a)(1), the estimate must equal the cost of final closure at the point in your facility's active life when the extent and manner of its operation would make closure the most expensive. We are requiring in § 267.142(a)(2) that you base the closure cost estimate on the cost to hire a third party to close the facility. In addition, the closure cost estimate may not incorporate any salvage value from the sale of hazardous waste, non-hazardous waste, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure (§ 267.142(a)(3)). This disallowance of a salvage credit reflects the Agency's conviction that allowing salvage value to be credited is inconsistent with the goal of ensuring adequate funds are available in the event that the owner or operator fails to cover the costs of closure. Further, your cost estimate may not incorporate a zero cost for hazardous waste or non-hazardous waste that you might be able to sell. The value of waste at closure sometime in the future is too speculative to allow it to offset closure costs (§ 267.142(a)(4)).

Under § 267.142(b), you must adjust the closure cost estimate for inflation within 60 days before the anniversary date you established for the financial instruments utilized to comply with § 267.143. Proposed § 267.143, which we discuss below, would require an instrument to demonstrate financial assurance for closure. If you use the financial test or corporate guarantee to demonstrate financial responsibility, you must update your closure cost estimate for inflation within 30 days after the close of the firm's fiscal year and before submitting the updated financial test information to the Regional Administrator. Because the financial test submission must be updated for inflation within 90 days of the close of the firm's fiscal year, effectively both users of the financial test and corporate guarantee, and users of the other mechanisms must update the cost estimates on the same schedule.

However, we requested public comment on whether to change the deadline for updating the cost estimate for inflation for users of the financial test to 90 days after the close of the fiscal year. Changing to 90 days would have made this requirement the same as the deadline for updating the financial test. After evaluating the public comments, we decided to keep the dates for updating cost estimates for holders of standardized permits the same as for individual permits. Changing these dates would have made them inconsistent with the dates for individual permits. While two commenters recommended the change, another recommended against it and we determined that keeping the dates consistent with the other program requirements would be preferable.

In adjusting your cost estimate, you may recalculate the maximum costs in current dollars or use an inflation factor derived from the Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce. This is a slightly different specification for the adjustment than is currently in § 264.142 because those regulations specify the use of the Implicit Price Deflator for Gross *National* Product rather than the Gross *Domestic* Product. We proposed using the Gross Domestic Product deflator under this rule because the Gross Domestic Product Deflator is more readily available. Generally, the differences between the two series are not significant and we believe using the more readily available information will help you to better comply with the requirement to adjust your cost estimate for inflation. We received no adverse comment on using the Gross Domestic Product deflator and therefore, have included it in the final rule. EPA notes it has issued guidance allowing owners and operators of facilities with individual permits to use the Implicit Price Deflator for Gross Domestic Product under § 264.142 so long as they are consistent in its use.

Under proposed § 267.142(a)(5), you would have been required to revise your closure cost estimate in accordance with the closure plan within 30 days after submitting your closure plan. This provision is not part of the final rule because now the closure plan must be submitted with the Notice of Intent. The requirements for closure costs are the same in § 267.142 as in § 264.142. You would also adjust the revised closure cost estimate for inflation as proposed in § 267.142(b). These requirements mirror those currently in part 264 for facilities operating under individual permits and have been incorporated into this final rule.

As with the current § 264.142(c) requirement, under § 267.142(c), you must update the closure cost estimate when a modification to the closure plan has been approved. If you modify your operations so that the cost of closure would increase, you must increase the closure cost estimate and provide financial assurance for that amount under § 267.143.

Similarly, the requirements in § 267.142(d) correspond to the existing requirements in § 264.142(d) and require you to maintain the latest cost estimate at the facility, and, when the cost estimate has been adjusted for inflation as required under § 267.142, the latest adjusted closure cost estimate.

In the preamble and docket to the proposed rule, we described several options that the holder of a standardized permit could use to develop a closure cost estimate in the absence of a closure plan. As discussed more fully above in Subpart G—Closure, EPA is requiring

facilities to submit a closure plan as part of the Notice of Intent and the closure plan will be available when the closure cost estimate is prepared. As a result, the final rule does not need to contain tools to develop a closure cost estimate in the absence of a closure plan. However, because of comments suggesting that the various options for developing closure cost estimates could be useful, we note that the Options remain in the docket and may be used as aids in computing cost estimates.

EPA also requested comment on waiving cost estimates for facilities that use the financial test (Option 6). Some commenters objected to this because firms can initially pass the financial test, but then later fail to qualify. Such firms will need a cost estimate to determine the amount of the replacement financial assurance instrument. EPA agrees with the comments that having a cost estimate will be useful in determining the amount of a replacement financial assurance instrument, if a facility later fails to qualify and, so, EPA is not providing a waiver for cost estimates for facilities that use the financial test. One of the commenters noted that a firm could pass the financial test and then declare bankruptcy without a cost estimate so that the permitting authority could have difficulty in presenting a claim in bankruptcy court. EPA notes that closure costs are not actually ''claims'' in bankruptcy court, but are regulatory obligations imposed via governmental policy and regulatory filings and, as such, continue despite a bankruptcy filing. The Agency agrees, however, that having a cost estimate in place during a bankruptcy may be helpful, not only because it aids the owner/operator in evaluating its financial and environmental obligations, but also because it may assist the regulatory authority in determining the extent of the owner/operator's regulatory obligations.

4. Financial assurance for closure. We designed the requirements in § 267.142 to ensure that the cost estimate which forms the basis for determining the amount of the financial assurance instrument required in § 267.143 would provide sufficient funds to close the facility properly at any time. We want to ensure that there would be sufficient financial resources to close the facility properly even in the event that the facility enters bankruptcy. The requirements in § 267.143 specify the mechanisms from which you must choose to demonstrate financial assurance for closure obligations.

The requirements in § 267.143 allow the use of the same mechanisms that are available to owners and operators of facilities operating under individual permits currently issued under part 264. However, we have made modifications to these requirements (from the analogous requirements in part 264) to account for the particular circumstances of the standardized permit. The differences between the requirements under §§ 264.143 and 267.143 are discussed below.

Closure Trust Fund (§ 267.143(a))

Under § 267.143(a), the pay-in period for the closure trust fund for a facility with a standardized permit differs slightly from the pay-in period for facilities with individual permits issued under part 264. Currently, if you have a new facility seeking coverage under a part 264 permit, you must make annual payments into the trust fund over the remaining life of your facility, as estimated by your closure plan, or over the life of the permit (which is usually ten years), whichever is shorter. Under the proposed standardized permit procedures, however, we proposed a period of three years as the pay-in period. We chose this time period (which is shorter than the life of the permit as currently allowed for individual permits under § 264.143(a)(3)) because the current requirements in § 264.143(a)(3) were selected to accommodate the types of operations, such as landfills, which would normally be receiving waste over a period of years, with potentially increasing closure costs over that time period. Conversely, we did not expect facilities proposing to operate under the standardized permit to build up their waste volumes, and the resulting closure costs, over time. Moreover, the cost for closing a facility operating under the standardized permit would not include the costs of ground water monitoring, covers, or post-closure monitoring, so we expected the cost to be less than for many of the other types of facilities with individual permits that are currently subject to § 264.143. Therefore, we anticipated that the burden of the three-year pay-in period would not be excessive. Further, we noted that requiring a three-year pay-in period can preclude some potential problems that can arise under the longer pay-in period. For example, a long pay-in period can lead to insufficient funds being available at the time of closure, if the facility closes early. If the financial condition of the permittee were to deteriorate toward the beginning of the pay-in period, the owner or operator would not yet have funded a substantial fraction of the trust, and the permitting authority could be left with insufficient funds for closure in the event of the permittee's failure to perform closure. Furthermore, the three-year period is consistent with the requirements for financial assurance for commercial storers of PCB wastes. See § 761.65(g)(1)(i). EPA requested comment on the proposed use of three years as the pay-in period for a trust fund.

We received several comments on the pay-in period for the trust fund for new facilities. One state noted that a three-year pay-in period would reduce the incentive for interim status facilities or generators who wish to have the option to store for more than 90 days to apply for a standardized permit. However, as noted in the preamble to the proposal, the pay-in period for interim status facilities that use, or switch to, a trust fund ended on July 6, 2002 (twenty years after the effective date of the financial responsibility rules for closure and post-closure care). Conversion to a permit, whether standardized or individual, does not reopen the pay-in period or extend the pay-in period. An owner or operator who switches from another mechanism to a trust fund under a standardized permit must fully fund the trust. For a generator who wishes to obtain a standardized permit, we believe that a three-year pay-in period provides sufficient time to afford a trust fund. In addition, we note that generators are not required to use a funded trust fund and can instead use other mechanisms such as a letter of credit or surety bonds that require a smaller cash outlay.

We received a comment from a state and an industry association that the three-year pay-in period was appropriate. On the other hand, some states and the Association of State and Territorial Solid Waste Management Officials objected to the three-year pay-in period and instead recommended a fully funded trust. Upon review of these comments, the Agency believes that the three-year pay-in period strikes an appropriate balance between the need for complete financial assurance, and the possibility that immediate funding of a trust would be prohibitively expensive. Also, a state that wishes to adopt the standardized permit rule, but believes that the three-year pay-in period is too long is not precluded by RCRA from requiring immediate funding of the trust.

An existing facility whose trust fund's value is less than its closure cost estimate when it receives a standardized permit would have 60 days to increase the value of the trust to the amount of the closure cost estimate. The requirement proposed in § 267.143(a)(3)

clarified that the 60 days will apply both to existing facilities under interim status and under individual permits, regardless of when they obtain a standardized permit. This means that the facility would effectively have 60 days to increase the value of the trust. EPA received no comments on this proposal and so has included it in the final rule.

Surety Bonds (§ 267.143(b) and (c))

The proposed rule would have allowed you to use surety bonds guaranteeing either payment or performance as mechanisms to demonstrate compliance with proposed § 267.143(b) or (c), respectively. As in the existing part 264 subpart H standards, you would also have to establish a standby trust fund. Commenters objected to the use of a surety bond in the absence of a closure plan because it would place an undue burden on permitting agencies in the event that the surety had to close the facility under the performance bond. We agree with this comment, and is another reason that the Agency has required an approved closure plan to be submitted with the Notice of Intent and before the issuance of the standardized permit.

We received a comment from a state recommending that we require 120 days of notice before the cancellation of a surety bond, or a letter of credit under the solid waste financial regulations so that those regulations mirror the requirements for hazardous waste facilities. While this comment is outside of the scope of this rulemaking, we would note our agreement with the desirability of 120 days of notice before the cancellation of a surety bond or a letter of credit and point out that this is already required. The financial responsibility regulations for municipal solid waste landfill facilities are in 40 CFR 258.70 to 258.75. In 40 CFR 258.74(b)(7), the surety is permitted to cancel the bond 120 days after sending a notice of cancellation by certified mail to the owner or operator and to the State Director. 40 CFR 258.74(c)(3) has a similar requirement for advance notice of cancellation of a letter of credit. The federal regulations already incorporate the amount of notice recommended by the state in their comment.

Letter of Credit (§ 267.143(d))

The proposed regulations would allow you to use an irrevocable standby letter of credit, and a standby trust fund as specified in existing § 264.143(d). We received no significant comment on this portion of the proposal and have incorporated this portion of the proposal into the final rule.

Closure Insurance (§ 267.143(e))

Under proposed § 267.143(e), we proposed to allow you to use insurance as a mechanism for demonstrating financial assurance for closure. The requirements of this section referenced the corresponding existing requirements in § 264.143(e). We also requested comments on the conclusions of the EPA Inspector's General report about captive insurance, and on whether to require that insurers who provide financial assurance insurance policies must have a minimum rating from a rating agency.

ASTSWMO objected to allowing insurance for closure, and made the following points: ''Closure insurance should not be allowed for facilities with standardized permits due to the uncertainties of insurance as an appropriate financial assurance mechanism in general and the potential problems associated with captive insurance in particular. If EPA does wish to allow closure insurance, the insurance policy must guarantee that funds will be available for closure.''

In reviewing this comment, EPA contacted the commenter to seek clarification of some of the points raised. The commenter noted that closure insurance policies can present difficulties for permitting agencies because the regulations do not specify the language of the policies, but only the language of the certificate of insurance. The commenter noted that endorsements can require a careful review to ensure that they have not changed the terms of the policy in a way that would render it inconsistent with the regulatory requirements. Also, the commenter clarified that the concern of payment by policies included concern that insurers could become insolvent, as occurred with Reliance Insurance, and be unable to pay claims.

Although EPA agrees that insurance policies can require a careful review, the rights and obligations under insurance policies issued to satisfy state or federal financial assurance requirements are controlled by those requirements. Thus, where a policy is issued to comply with RCRA financial assurance requirements set forth in statutes or regulations, those requirements will be read into the policy and the policy will be effectively amended to conform to the statute. Non-conforming provisions are null and void. See, Holmes-Appleman on Insurance, Section 22.1 et seq., esp. pp. 365, 368, 379,380; Couch on Insurance, Third Edition, Sections 19:1, 19:5 and 19:11.

The issues raised by the commenter transcend the standardized permit rule and could apply to insurance for other financial assurance obligations under parts 264 and 265. EPA did not propose or seek comment on an alternative that would disallow insurance as a financial assurance mechanism. As noted in the preamble to the proposed rule (66 FR 52192 at 52198), we did not reopen the existing regulations to public comment, except as explicitly set forth under the proposed rule.

Because of interest by ASTSWMO and other issues involving insurance, an EPA federal advisory committee, the Environmental Financial Advisory Board, is undertaking a review of insurance as a financial assurance mechanism for Subtitle C facilities; ASTSWMO has been a part of this review. EPA believes that the suitability of insurance as a financial assurance mechanism is best resolved for all Subtitle C facilities, rather than in a piecemeal fashion, following an opportunity to review any recommendations from the Environmental Financial Advisory Board. Since companies that may seek to obtain a standardized permit may already have an insurance policy for the facility, disallowance of insurance in the standardized permit would provide an disincentive to obtaining a standardized permit. States can, however, be more stringent than the federal requirement by prescribing policy language or disallowing insurance when they adopt this rule.

We also agree with the later portion of the ASTSWMO comment that ''the insurance policy must guarantee that funds will be available for closure.'' In the proposal, we had proposed that insurance as specified in 40 CFR 264.143(e) would be an allowable mechanism. 40 CFR 264.143(e)(4) states ''The insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to the amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies.'' We believe that this language addresses the concern in the ASTSWMO comment regarding the need to guarantee that funds will be available for closure.

On the issue of captive insurance, in addition to the comments from ASTSWMO, we received several comments both supporting and recommending against accepting captive insurance as a mechanism. In the proposed rule, we asked for information regarding captive insurance, but did not make any specific proposals. In this

final rulemaking, we are not determining whether or not to allow captive insurance as a financial assurance mechanism. EPA is continuing to analyze the information and comments it received on the proposed rule, and is preparing a report to Congress that was required by an EPA appropriations bill. While the focus of that report will be on insurance for municipal solid waste landfills, the analysis of financial assurance issues surrounding captive insurance may apply to both municipal solid waste and hazardous waste facilities.

Finally, we had proposed requiring that insurance providers have a minimum rating from either Standard & Poor's, Moody's, or A. M. Best. Comments on this issue included support, objections to the cost of obtaining a rating for a captive insurer, and questions about the relationship between the rating of the parent insurance company and the rating of a subsidiary that would be writing environmental policies. The Agency is still evaluating these issues and the comments submitted; therefore, the Agency is not promulgating a final rule on a minimum rating of insurers at this time.

Financial assurance.

Financial Test (§ 267.143(f)) and Corporate Guarantee (§ 267.143(g))

The proposed regulation in § 267.143(f) would have allowed the use of a financial test by you or by a corporate guarantor, as is currently provided in § 264.143(f). The test that EPA proposed differs from the test that is currently in effect in parts 264 and 265.

The proposal included changes to the financial test that would make the test less available to firms more likely to enter bankruptcy. The test would do this by changing the financial test ratios to make the test less available to firms with large debts compared with their cash flow or net worth. However, the proposed rule allowed firms that pass the financial test to assure a higher level of obligations than the current RCRA Subtitle C financial test. Under the financial test in 40 CFR parts 264 and 265, companies must have tangible net worth at least six times the amount of the obligations covered, and also of at least $10 million. Firms that pass the proposed test must also have $10 million in tangible net worth. They can assure an amount of obligations up to $10 million less than their tangible net worth.

Some commenters suggested that we should reconsider the financial test in light of recent corporate failures and financial scandals of Fortune 500 companies with audited financial statements, while other commenters argued that the regulations should make available all the mechanisms that are currently available to firms. For the reasons explained at proposal, the Agency continues to believe that the rules should contain a financial test, but are maintaining the approach included in the proposal-that is, continue to make available a mechanism that allows firms with a low probability of failure to self insure, and at the same time reduce the risk of the financial test by disallowing its use by companies that are more likely to enter bankruptcy. Some states may determine that they wish to be more stringent than this requirement and further restrict the availability of the financial test. This is allowable under RCRA.

In the proposal, we also requested comments on not requiring companies that pass the financial test to provide a cost estimate. As noted above, based upon public comment, we have decided that we will still require cost estimates from such firms.

The record keeping and reporting requirements of the proposed rule (§ 267.143(f)(2)(i)(C)) would only require a special report from the independent certified public accountant in instances where the Agency could not verify financial data in the chief financial officer's letter from the firm's financial report. The proposal was intended to reduce the reporting burden and the expense of obtaining a letter from an outside auditor for any user of the financial test whose CFO submitted information that could be verified from the user's audited financial statements. We received comments from states supporting and objecting to this change. The objection involved the difficulty for the regulatory agency in reviewing financial statements and determining whether data in the chief financial officer's letter were taken from the firm's financial report. EPA agrees that this may present some difficulties and is modifying the language of the CFO's letter to require the CFO to note whether the information in the letter is taken directly from the audited financial statement. If not, the regulation requires an outside auditor's report explaining how the information was derived. Because we continue to believe that the proposed approach, as modified, would reduce the reporting burden without significantly impacting the usefulness of the information provided, we have incorporated it in the final rule.

The proposed regulation did not prescribe language for the chief financial officer's letter as we currently do under § 264.151(f). Commenters advised us that prescribing the language of the Chief Financial Officer's letter would facilitate compliance checks by the state permitting agency. Therefore in the final rule, we are specifying language for the CFO letter. This language appears in § 267.151(a).

Because this rulemaking does not change the financial test in parts 264 and 265, owners or operators who have both standardized permit facilities and facilities using the financial tests in parts 264 and 265 may have questions about which chief financial officer's letter to use. For facilities with the standardized permit, the chief financial officer should use the letter in § 267.151. This letter will require the enumeration of costs assured through financial tests in parts 264 and 265. For interim status or individually permitted facilities, the chief financial officer will continue to use the letters in § 264.151.

Situations may arise where an owner or operator has two types of units at a facility, one type subject to the financial assurance requirements of Part 267, and the second subject to the financial assurance requirements of Part 264 or Part 265, but cannot meet the applicable financial test for both types. For example, the owner or operator of a facility has units subject to an individual permit and provides financial assurance via the financial test in § 264.143(f). The owner or operator wants to add new units subject to a standardized permit, but does not qualify via the financial test in § 267.143(f) for those new units. Such a person would have to use a third-party financial assurance mechanism under § 267.143, to qualify for a standardized permit for the new units.

Similarly, an owner or operator may have two or more facilities, with one set of facilities subject to a standardized permit with Part 267 financial assurance, and another set subject to individual permits or operating in interim status with financial assurance via Part 264 or Part 265. The financial assurance requirement for the facilities are determined by their respective regulations. This is consistent with the situation under Parts 264 and 265. For example, an owner or operator may use a performance surety bond at the facility permitted under an individual permit that requires financial assurance consistent with Part 264, but may use a mechanism other than a bond consistent with part 265 at a facility operating under interim status.

Use of Multiple Mechanisms

Proposed § 267.143(h) would allow you to utilize a combination of

mechanisms at your facility. We received comments both supporting and objecting to this provision. The objection was that if an owner or operator could only cover part of the closure costs with the financial test, they should not be allowed to use the financial test for any of the costs, and instead should be required to use a third-party mechanism.

Because the financial test in the standardized permit rule is a better predictor of bankruptcy than the test in Parts 264 and 265, the risk of a facility qualifying for the test and then entering bankruptcy is lower than with the Parts 264/265 tests. The test in the proposal and the final rule requires that the firm have at least $10 million more in tangible net worth than the amount assured through a financial test. Disallowing the use of the financial test in combination with a third-party mechanism could establish the situation where owners or operators each with two facilities and each with identical financial characteristics and total closure costs could have different amounts that could be covered by the financial test, based upon how the costs were distributed between their respective operations. For example, two companies could both have $12 million in tangible net worth and meet the other requirements of the financial test with identical financial statements. The first company has two facilities, one with $1.6 million in closure costs and the other with $1.4 million in closure costs. The second company has one facility with $2 million in closure costs, and another facility with $1 million in closure costs. If EPA were to disallow the use of the financial test in combination with other mechanisms, the first company could use the test for only $1.6 million of the closure costs, but the second could use it for $2 million.

An all or nothing approach also could increase the incentive to underestimate closure costs, particularly for a facility with a closure cost estimate only slightly over the amount that could be covered by the test. The approach in the proposed and final rules is consistent with the regulations already adopted by EPA governing financial requirements for municipal solid waste landfills, and with an earlier proposal to revise the RCRA Subtitle C financial test, which is still under consideration (56 FR 30201, July 1, 1991), and with regulations governing third-party liability coverage. EPA determined that it should incorporate this flexibility into the final rule, but, as previously noted, under RCRA a state may adopt more stringent regulations.

Under proposed § 267.143(i), if you have multiple facilities with a standardized permit, you would be able to use a single mechanism for more than one of your facilities. This provides the same flexibility that owners or operators of facilities with individual permits or interim status facilities have under existing §§ 264.143 and 265.143. This flexibility is also included in the final rule.

5. Post closure financial responsibility. Because the proposed standardized permit rule would only be available to facilities that can clean close, the proposed standardized permit regulation did not anticipate a need for post-closure cost estimates, or financial assurance for post-closure care. Similarly there is no need for mechanisms for combining financial assurance for closure and post-closure care. Therefore, the final regulations in part 267 do not have provisions reflecting the existing requirements of § 264.144–146. As noted in § 267.111(c), however, if a unit at a standardized permit facility cannot be clean closed, then the owner/operator must apply for a permit as a landfill in accordance with 40 CFR part 270. The post closure financial responsibility regulations in §§ 264.144 and 145 would then apply.

6. Liability Requirements. We proposed to require financial assurance for third party liability for sudden accidental occurrences. We proposed that you have and maintain liability coverage of at least $1 million per occurrence, with an annual aggregate of at least $2 million exclusive of legal costs (§ 267.147(a)). These proposed requirements are the same as for facilities with individual permits, and apply to the facility or a group of facilities. Thus, if the owner or operator of facilities with individual permits had the required liability coverage for those facilities, then covering these facilities under the standardized permit would not increase the dollar amount of the liability coverage.

The proposed mechanisms available for demonstrating financial assurance for third party liability were the same under the standardized permit rule as for units covered by individual permits. In the proposed rule, we arranged the mechanisms in the same order as they appear for closure, even though this is different from the order currently in § 264.147. We requested comments on whether this makes the regulation easier to follow, or if we should organize proposed § 267.147 in the same order as existing § 264.147. The mechanisms for third party liability would be a trust fund (§ 267.147(a)(1)), surety bond (§ 267.147(a)(2)), letter of credit (§ 267.147(a)(3)), insurance (§ 267.147(a)(4)), financial test (§ 267.147(a)(5)), or guarantee (§ 267.147(a)(6)). We would also allow the use of multiple mechanisms under proposed § 267.147(a)(7), as are allowed under existing § 264.147(a)(6). In the case of reordering the mechanisms in § 267.147 as they are in § 267.143, the commenters agreed with this approach. On other aspects of the proposal, there were no adverse comments and the final rule has been finalized, as proposed, with respect to these aspects.

In the proposal, we requested comments on whether pure captive insurance should be treated differently for third-party liability coverage, where coverage is based on the risk an event will occur, as compared to closure, where the risk is based on an event that will, in fact, occur. As previously noted, this rulemaking is not promulgating a decision on captive insurance.

We proposed that the standardized permit would not be available for land disposal units such as surface impoundments, landfills, land treatment facilities, or disposal miscellaneous units. Therefore, requirements for land disposal units under existing § 264.147(b) to maintain third party liability for non-sudden accidental occurrences would not be necessary for standardized permit units. The proposed regulation and the final regulation reserves § 267.147(b).

Because the proposed standardized permit was intended to rely upon limited interaction between the permittee and the permitting agency, we believed it would not be appropriate to include the provisions of existing § 264.147(c) and (d). These provisions, respectively, allow the owner or operator to request a variance from the amounts required in § 264.147(a), or allow the Regional Administrator to require a different amount. There is no corresponding provision in the proposed § 264.147 and the corresponding paragraphs were reserved. As EPA received no adverse comment on excluding these provisions, the rule is finalized, as proposed.

Along with the proposed changes to the financial test for closure, we had previously proposed changes to the financial test for liability coverage (56 FR 30201, July 1, 1991 and 59 FR 51523, October 12, 1994). The proposed changes to the financial test for liability coverage were included in the proposal for this regulation. EPA received no adverse comment on this test. As previously noted, we have promulgated the proposed financial test for closure and have also decided to promulgate the proposed financial test for liability here

as well. If a company is using the financial test for closure of its standardized permit units, and wishes to also use the financial test for third party liability coverage of its standardized permit units, it should use the chief financial officer's letter in § 267.151(a). In § 267.151(b) we have provided language for the chief financial officer's letter for companies that use the financial test only for third party liability for facilities with standardized permits.

Finally, because the financial tests for facilities regulated under interim status and individual permits differ from the financial tests under the standardized permit rules, a question may arise on which chief financial officer's letter to use to demonstrate compliance with third-party liability requirements. Companies that use the financial test only for third-party liability (and not for closure), and who also have facilities using the financial test either for a facility with an individual permit or operating under interim status, should use the language for the chief financial officer's letter in 40 CFR 264.151(g). A company that qualifies for the financial test under the individual permit regulations will also qualify under the standardized permit regulations for liability coverage. As noted previously, firms that use the financial test to provide financial assurance for closure for standardized permit units and interim and individual permit units, should use the chief financial officer's letter in § 267.151 for the standardized permit units, and the chief financial officer's letter in § 264.151 for interim status and individual permit units.

7. Other provisions of the financial requirements. We proposed that the requirements in existing § 264.148 to notify the permitting authority in the event of a bankruptcy would apply also to the standardized permit (see proposed § 267.148). We also referenced this requirement in proposed § 267.140(c). There were no adverse comments on this portion on the proposal, and we have included this provision in the final rule.

Under existing § 264.149, if your facility is in a state where EPA administers the program, but the state imposes its own financial assurance mechanism, you may continue to use the state approved mechanism. There were only three states where we administered the program, and we did not expect that these states have their own mechanisms. Therefore, we did not include an analogous provision in the proposal. We did not receive adverse comment on this omission. For the reasons discussed in the preamble to the proposal, we did not include the analogous provision in the final rule, and have reserved § 267.149 in this final rulemaking.

In the financial responsibility regulations covering facilities with permits under part 264, States can assume responsibility for an owner or operator's compliance with existing §§ 264.143 and 147 (§ 264.150). We included a similar provision (§ 267.150) in the proposal, but requested comment on whether such a provision is appropriate for standardized permits. We asked if states did in fact undertake such responsibilities, and asked if they would do so for holders of a standardized permit. Only one state commented on this provision and noted that it was not used. While we do not believe that this provision would have much use, we also see no harm in retaining this provision to provide flexibility should the circumstance warrant it. Therefore, we have included this provision in the final rule.

The proposed language of §§ 267.143 and 267.147 references existing § 264.151, and would require the use of the language in existing § 264.151. Section 264.151 contains the exact wording of the instruments used to demonstrate financial assurance. In light of the substantial amount of text in existing § 264.151, we decided not to propose the creation of a § 267.151. This was similar to our decision not to include the instrument language in the current interim status standards in part 265. Because we received comments that we should provide standard language for the chief financial officer's letter as part of the financial test, we have provided that language in § 267.151. If the Agency promulgates changes to the financial test in §§ 264 and 265 for holders of individual permits that mirror the requirements in § 267, EPA may eliminate the language in § 267.151 and simply require the language in a revised § 264.151 in a future rulemaking.

J. Subpart I—Use and Management of Containers

The requirements of part 267 subpart I are finalized, as proposed, and apply to the storage and/or non-thermal treatment of hazardous wastes in containers. No significant comments were received on this subpart, which includes:

1. What Standards Apply to the Containers? (§ 267.171)
2. What are the Inspection Requirements? (§ 267.172)
3. What Standards Apply to the Container Storage Area? (§ 267.173)
4. What Special Requirements Do I Need to Meet for Ignitible or Reactive Waste? (§ 267.174)
5. What Special Requirements Do I Need to Meet for Incompatible Wastes? (§ 267.175)
6. What Must I Do When I Want to Stop Using the Containers? (§ 267.176)
7. What Air Emission Standards Apply? (§ 267.177)

One comment regarding residues in empty containers, addressed the applicability language in § 267.170 which refers to § 267.1(b), which in turn, refers to part 261 subpart A. The commenter suggested that instead of indirectly referencing § 261.7, we add ''part 267'' to the list of cites in § 261.7 as a more direct method of addressing residues remaining in empty containers. We agree with the commenter, and will finalize the language in § 267.170 as proposed, and will add the requested language to § 261.7.

K. Subpart J—Tank Systems

1. Does This Subpart Apply to Me?

The applicability language of § 267.190 is finalized, as proposed. The final rule applies to above-ground and on-ground tanks, and excludes underground and in-ground tanks. Also excluded, are tanks with underground ancillary equipment (*e.g.*, piping).

We received several comments on the applicability of the standardized permit rule to tanks and tank systems. Most commenters believed that underground and in-ground tanks should be excluded from eligibility, noting that underground and in-ground tanks are more difficult to inspect and are difficult to perform integrity verification, noting that such tanks pose a risk of corrosion, damage, and leakage. Some commenters also argued that underground piping should not be allowed under a standardized permit, for the same reasons underground and in-ground tanks should be excluded. However, one commenter suggested that the final rule should allow underground tanks and/or piping to be eligible for the standardized permit, and that States should be given the discretion to impose individual permits when deemed necessary. The commenter also noted that certain wastes are more safely stored underground. Another commenter also supported allowing underground and in-ground tanks to be eligible for the standardized permit, suggesting the Agency incorporate similar provisions to § 264.192.

Based on the comments received and the Agency's experience in implementing the hazardous waste rules, we agree with those commenters

that argued that underground and in-ground tanks, and underground piping are inherently harder to inspect, and may be more susceptible to corrosion and leakage. The standardized permit is designed to be a streamlined approach to permitting, and therefore we believe that more complex tank systems might be better served under an individual permit. Furthermore, units under the standardized permit would be required to be clean closed, and a properly designed, constructed, and operated tank system with secondary containment should always be able to clean close with minimal unforseen contingencies. Therefore, the final rule does not allow underground and in-ground tanks, and tanks with underground piping to be eligible for a standardized permit.

2. What Are the Required Design and Construction Standards for New Tank Systems or Components?

The requirements of § 267.191 are finalized, as proposed. We did receive a comment about the Agency not proposing design and construction standards for facilities with underground tank systems. The commenter believed that there was no reason to exclude underground piping associated with above-ground tanks provided the integrity of the underground piping is verified and documented at regular intervals. As we stated previously, underground tank systems, and above ground /on-ground tanks with underground piping are not eligible for a standardized permit. The streamlined nature of the standardized permit process does not lend itself to requiring periodic verification and documentation of underground piping integrity.

3. What Handling and Inspection Procedures Must I Follow During Installation of New Tank Systems?

The requirements of § 267.192 are finalized as proposed. No significant comments were received on this section.

4. What Testing Must I Do for New Tank Systems?

The requirements of § 267.193 are finalized as proposed, except that the title of the section is changed to read ''What Testing Must I do for New Tank Systems?'' One commenter requested this change to improve the clarity of the section, and we agree.

5. What Installation Requirements Must I Follow?

The tank installation requirements of § 267.194 are finalized as proposed. No significant comments were received on this section.

6. What Are the Secondary Containment Requirements?

We are finalizing § 267.195 with some changes. In our proposal, we allowed tanks that could not detect a leak or spill within 24 hours to be eligible for the standardized permit. However, instead of providing a demonstration to the Director (as is required in 40 CFR 264.193(c)(3)), we discussed in the preamble that a facility would self-certify and document that a leak or spill cannot be detected and/or removed within 24 hours, and keep the certification on-site.

One commenter noted that the proposed rule included this provision, but was not referenced in subsequent sections about information that must be kept at the facility, or certifications that must be submitted. The standardized permit rule is intended for units (tanks, containers, containment buildings) that are easily designed and operated, and with minimal contingencies. More complex situations involving tank systems where leaks are difficult to detect, are better served under an individual permit. Furthermore, such demonstrations only serve to lengthen the overall permitting process, detracting from the intent of the rule to streamline the process as much as possible. Therefore, in the final rule, the provisions of § 267.195 will require that a facility's secondary containment system be able to detect and/or remove a leak or spill within 24 hours. The rule will not provide a self-certification provision for systems that cannot detect and/or remove leaks or spills within 24 hours. These tank systems will need an individual permit.

7. What Are the Required Devices for Secondary Containment and What Are Their Design, Operating, and Installation Requirements?

The final requirements of § 267.196 are modified from what was proposed. Specifically, although no significant comments were received on this section, we are removing the reference to ''vaults'' from § 267.196. Vaults are typically associated with underground tanks, and underground tanks are not eligible for a standardized permit.

8. What Are the Requirements for Ancillary Equipment?

The requirements of § 267.197 are finalized as proposed with one minor clarification to the proposed language. That change adds the words ''Above ground'' at the start of § 267.197(a), making the language consistent with the language in § 264.193(f)(1). No significant comments were received on this section.

9. The Following Sections of This Subpart are Finalized as Proposed, Because no Significant Comments Were Received.

a. What are the general operating requirements for my tank system? (§ 267.198)

b. What inspection requirements must I meet? (§ 267.199)

c. What must I do in case of a leak or spill? (§ 267.200)

d. What must I do when I stop operating the tank system? (§ 267.201)

e. What special requirements must I meet for ignitable or reactive wastes? (§ 267.202)

f. What special requirements must I meet for incompatible wastes? (§ 267.203)

g. What air emission standards apply? (§ 267.204)

L. Subpart DD—Containment Buildings

No comments were received on Subpart DD of Part 267, therefore §§ 267.1100 through 267.1108 are finalized as proposed.

V. Section by Section Analysis and Response to Comments for Part 270—EPA Administered Permit Programs: The Hazardous Waste Permit Program

This part of the RCRA hazardous waste regulations contains specific requirements for permit applications, permit conditions, changes to permits, expirations and continuation of permits, interim status, and special forms of permits.

A. Specific Changes to Part 270

1. Purpose and Scope.

Section 270.1 has been finalized with changes to what facilities are eligible for a standardized permit, as discussed previously. We are also using the following language ''Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that generate hazardous waste * * *'' The change was intended to further clarify the types of facilities that may be eligible for the standardized permit. No significant comments were received on this section.

2. Definitions

The proposed definitions at § 270.2 for permit and standardized permit are finalized as proposed. No significant comments were received on this section.

3. Permit Applications

The requirements of § 270.10(a) are finalized as proposed.No significant comments were received on this section.

4. Permit Re-Application

The requirements of § 270.10(h) are finalized as proposed. No significant comments were received on this section.

5. Transfer of Permits

The requirements of § 270.40 are changed to indicate how the standardized permit can be modified to reflect a change in ownership. The final rule adds to § 270.40 a reference to § 124.213 (routine changes with prior approval). Comments on this issue are discussed in the preamble at Section III.D—Maintaining a Standardized Permit. With this change, transfer of permits would be a routine change with prior approval of the Director.

6. Modification or Revocation and Reissuance of Permits

The requirements of § 270.41 are finalized as proposed. Comments on this section were discussed previously in the preamble at Section III.A.2.

7. Continuation of Expiring Permits

One commenter noted that in cases where an expiring standardized permit holder is informed that he/she is no longer eligible to continue operating under a standardized permit, the expiring permit holder only has 60 days to submit a part B permit application. Sixty days, the commenter noted, would not be sufficient time to submit the needed materials, and suggests 120 days to submit the information, just as interim status facilities have 120 days to submit their Part B information. We disagree with the commenter. As noted previously, while the permit application submitted to EPA does not need to contain all the information contained in the Part B permit application, that information must still be kept on-site at the facility and available for inspection. Therefore, we believe that 60 days should be adequate time to package and submit the Part B application.

8. Standardized Permits

The language at § 270.67 is finalized as proposed with a minor modification. The applicability of standardized permits has already been discussed previously in this preamble. The modification to this section is to the reference to subpart I of part 270. The part 270 requirements formerly in proposed Subpart I are finalized as part 270 subpart J. Also, the term ''TSD'' is added, for reasons described previously for § 270.1(b).

B. RCRA Standardized Permits for Storage and Treatment Units

This part of the preamble discusses the new part 270 subpart J requirements for RCRA Standardized Permits for Storage and Treatment Units, originally proposed as part 270 subpart I.

1. General Information About Standardized Permits

a. What Is a RCRA Standardized Permit?

The language in § 270.250 is finalized as proposed. No significant comments were received on this section

b. Who Is Eligible for a Standardized Permit?

The language in § 270.255 is finalized with changes to what facilities are eligible for the standardized permit. Eligibility was discussed earlier in this preamble in Section II.D.

c. What Requirements of Part 270 Apply to a Standardized Permit?

The language of § 270.260 is finalized as proposed. No significant comments were received on this section.

2. Applying for a Standardized Permit

a. How Do I Apply for a Standardized Permit?

Applying for a standardized permit is discussed earlier in this preamble (see Section III.A. for further discussion). The language of § 270.270 is finalized as proposed. No significant comments were received on this section.

b. What Information Must I Submit to the Permitting Agency To Support My Standardized Permit?

Section 270.275 lists the information that must be submitted to the permitting agency in support of the standardized permit. The final rule adds additional items to this section. These items are the closure plan, documentation demonstrating financial assurance for closure, and, for eligible facilities receiving wastes from off-site, a waste analysis plan, and documentation that the off-site and the receiving facility are under the same ownership. We received comments on the need for submitting a closure plan with the Notice of Intent, rather than 180 days prior to closure. (See preamble section IV.H.3.) The closure cost estimates and financial assurance for closure requirements are further discussed in the preamble in section IV.I. One commenter suggested adding to § 270.275 language providing for an optional submission of information detailing suggested specifications for supplemental terms and conditions, if any, that the owner or operator of the facility, would like the Director to consider including in their supplemental portion of the standardized permit. A voluntary submission of information was also discussed in the proposed preamble of the proposed rule (see 66 FR 52202, section IV.A.1.). We chose not to include applicable language in the regulatory section, because there is nothing that would prevent the owner/operator of the facility from suggesting such supplemental terms and conditions in their submission.

c. What Are the Certification Requirements?

The signed certification, pursuant to § 270.280, documents the facility owner/operator's compliance with the requirements of part 267. The signed certification is based upon a compliance audit performed either by or for the facility owner/operator.

Proposed § 270.280(a)(ii) is being changed to reflect our intent that a facility (in the case of an existing facility) be in compliance at the time they submit their Notice of Intent, and that if a facility is not in compliance with part 267, based upon their audit and certifications, it should not submit its Notice of Intent until it comes into compliance, and in the case of new facilities, that they be designed and constructed to comply. The new language will read: ''Has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR part 267, and will continue to comply until expiration of the permit.'' The facility's audit may either be a self or third party audit. (See section III.A.1.b. of this preamble for a discussion on compliance audit comments.)

3. Conducting Compliance Audits

The following section provides information to assist owners/operators who are seeking a standardized permit to conduct compliance audits, as required by part 270.275(f). Compliance audits may be conducted by either the applicant or a third party.

a. Section 270.275(f) requires the standardized permit applicant to submit to the permitting authority an audit of the facility's compliance status with 40 CFR part 267. When conducting this audit, the auditor may consult the Protocol for Conducting Environmental Compliance Audits of Treatment, Storage and Disposal Facilities under the Resource Conservation and Recovery Act, EPA–305–B–98–006 (December 1998). You will find that protocol at the following web address: *http://www.epa.gov/compliance/incentives/auditing/protocol.html.* In

addition, the auditor may consult Procedures for Conducting Compliance Audit Required by 40 CFR 270.275(f). This document is located in the Docket, as well as on the web site described in paragraph (b) below.

b. The audit must address all the requirements of part 267 that apply to the facility. The auditor may develop a site specific audit protocol or inspection checklist to be used while conducting the audit. Sample audit checklists can be found at the following web address: *http://www.epa.gov/epaoswer/hazwaste/permit/epmt/toolperm.htm.*

c. The person conducting the audit should of course have appropriate training for conducting the audit. The auditor should have a working process knowledge of the facility or of another facility with similar operations, and should have a working knowledge of the proposed 40 CFR part 267 requirements that apply to the facility.

d. The results of the audit (*i.e.,* an audit report) must be prepared documenting compliance with the applicable requirements of part 267. The audit report must be signed and certified by the auditor as accurate. The final rule adds language to § 270.280(c) clarifying that the audit (audit report) must be signed and certified by the auditor as accurate prior to submitting to the Director with the Notice of Intent.

4. What Information Must Be Kept at the Facility

The informational requirements of § 270.290 through § 270.320 are finalized as proposed, except for the portions of § 270.290 noted below.

a. Regarding proposed § 270.290(d), because we are not allowing a waiver for security provisions, the last phrase of proposed § 270.290(d) regarding the waiver is omitted in the final rule.

b. Because we are requiring a closure plan to be submitted with the Notice of Intent, we are omitting proposed § 270.290(m).

One commenter noted that, while we included requirements for information that must be kept on site for tanks and containers, we did not include a similar requirement for containment buildings. The requirements for what information must be kept on site for tanks and containers were based on the previously existing part 270 part B requirements for these units. When the requirements for containment buildings were finalized (57 FR 37265, August 18, 1992), a section detailing the part B informational requirements for those units was not provided. Therefore, in the standardized permit rule, a section in part 270 on containment buildings was not provided. In deciding what information should be kept on site, the facility should maintain information related to the part 267 containment building requirements.

VI. State Authorization

A. Applicability of the Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect of State Authorization

Today's rule finalizes regulations that are not promulgated under the authority of HSWA. Thus, the standards finalized today are applicable on the effective date only in those states that do not have final authorization. Moreover, authorized states are required to modify their program only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the Federal program. Today's rule however, is considered to be neither more nor less stringent than the current standards. Therefore, authorized states are not required to modify their programs to adopt regulations consistent with and equivalent to today's final standards.

Because the Agency believes that the changes promulgated today will make the permitting program more efficient and save time, EPA strongly encourages States to adopt and seek authorization for this rule as soon as possible. EPA also encourages States to begin implementing this rule as soon as it is allowable under State law, while the RCRA authorization process proceeds.[5] Note that the requirements in today's rule are not less stringent than the previous federal standards.

As in the case of individual permit procedures, a State that chooses to adopt and request authorization for issuing standardized permits must adopt permitting procedures equivalent, but not necessarily identical to those promulgated by EPA. The authorization regulations in 40 CFR 271.14 list several provisions of the permitting regulations which EPA determined are necessary for an equivalent permitting program. States would need to adopt a similar scope of legal authorities for issuing standardized permits as for individual permits.

[5] EPA encourages States to take this approach for federal requirements where rapid implementation is important. For example, EPA encouraged States to implement State Corrective Action Management Unit Regulations, once adopted as a matter of State law, prior to authorization (see 58 FR 8677, February 16, 1993).

VII. Regulatory Assessments

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] we must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that this proposed rule is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, we submitted this action to OMB for review before publishing it in the **Federal Register.** Changes made in response to OMB suggestions or recommendations are documented in the public record in support of this final rule.

1. Assessment of Potential Costs and Benefits

For regulations that are projected to have significant economic impacts, agencies are required to conduct a ''Regulatory Impact Assessment'' of potential costs and benefits of the regulation. Although OMB has not designated this rule as economically significant, we have completed an economic analysis of it (available to the public from the EPA docket at *http://www.epa.gov/edocket*), the results of which we summarize below.

a. Description of entities to which this rule applies. This rule potentially applies to approximately 870 to 1,130 existing private sector and Federal facilities which non-thermally treat and/or store RCRA hazardous waste in tanks, containers, and containment buildings either ''on-site'' (*i.e.*, at the waste generator site), or at ''off-site'' facilities that receive waste from off-site, provided that the company/institution is under the same ownership. Eligible facilities may voluntarily participate in the RCRA standardized permit program. We designed the final rule to reduce the paperwork reporting burden for eligible facilities, as well as to reduce EPA and state administrative review time for these permit activities. Eligible facilities are a mix of small, medium and large facilities.

b. Description of potential impacts of this rule. The RCRA standardized permit rule is designed to streamline the regulatory burden to EPA/states, as well as to private sector and Federal facilities covered by the rule, by reducing the amount of information collected, submitted and reviewed for RCRA permit actions (*i.e.*, new RCRA permit applications, RCRA permit modifications, and RCRA permit renewals). Our economic analysis presents monetary estimates of the future average annual impact expected for five potential impact categories: (1) Paperwork burden reduction, (2) benefits and costs associated with changes to closure financial assurance (three-year pay-in period, financial ratio test, and independent financial audit report), (3) cost for facility certification audit, (4) improvement in financial return on waste management capital assets and investments, and (5) potential reduction in state hazardous waste fees paid by eligible facilities for RCRA permitting.

Based on our economic analysis, we estimate potential average annual cost savings to between 870 to 1,130 eligible facilities of $100 to $20,800 per permit action (*i.e.*, between 2 to 480 paperwork burden hours reduction per permit action), which represents a 4% to 40% reduction in burden hours compared to the conventional RCRA permit process. The extent of reduction depends on the type of permit action (*i.e.* new or interim status permits, conversion of existing permits, permit renewals, or permit modifications), and the type of eligible waste management unit (*i.e.* tank, container, or containment building). We estimate an average of 55% of annual permit actions will involve container systems, 43% will involve tank systems (although some small fraction of tanks may be ineligible in-ground and underground tanks), and 2% containment buildings. Aggregated over a future 30-year average annual 166 to 202 RCRA standardized permit actions (11% of which are expected to consist of conversion of existing permits, 61% of interim status and new facility permit applications, 18% modification permit applications, and 10% permit renewal applications upon expiration), produces an expected national paperwork cost savings benefit of $1.3 million to $3.4 million annually. This annual savings consists of 35% to 94% of benefits to eligible facilities, and 6% to 65% of benefits to EPA/state permit authorities (numerical ranges reflect two alternative estimation methods). Potential cost savings benefits are incremental to the average annual cost associated with the current (conventional) RCRA permitting process.

In addition to paperwork burden savings, our economic analysis also estimates $0.01 million to $0.12 million in average annual potential improvement in financial return to eligible hazardous waste management capital assets and investments (*i.e.* tanks, containers, and containment buildings), from expediting by 2.5 to 28 months per permit action, the time required for the RCRA permitting process. We also estimate a potential net annual cost of $0.03 million to $0.04 million associated with changes to closure financial assurance, and potential annual costs of $0.005 million (if self-audit) to $2.6 million (if third-party audit) for the certification audit. Taking both benefits and added costs into consideration, we estimate the net annual economic impact of the rule at $2.8 to $3.5 million in potential annual paperwork burden cost savings. In addition, we estimate a potential reduction of $7.2 to $8.8 million per year in hazardous waste permitting fees paid by eligible facilities to state governments, which represents a ''transfer payment'' impact, rather than a real resource ''economic impact,'' to avoid double-counting state government paperwork burden impacts in our analysis. This does not necessarily translate into a net revenue loss to state governments, as states may beneficially reallocate these annual administrative resources to other revenue-generating activities. From the perspective of eligible facilities, the potential reduction in state fees added to the net reduction in annual costs to facilities associated with RCRA hazardous waste permits, provides a potential annual regulatory relief to eligible facilities of $10.0 million to $12.3 million per year.

These impact estimates represent hypothetical adoption of this rule by all state governments. However, the net benefits of the rule may be less than estimated because not all states may act immediately to change their state laws in order to adopt the standardized permit. Such an assumption is unlikely to occur in practice because (1) it will take states some time to change their laws, and (2) some states may choose not to adopt the EPA rule. For example, five states (AR, GA, MI, TN, WA) oppose offsite facility eligibility based

on state government comments to the October 2001 proposed rule. These five states accounted for 64 (11%) of the 595 offsite facility universe in the 2001 RCRA Biennial Report count of waste management facilities (*i.e.* facilities which received RCRA hazardous waste shipments from offsite). If these five states do not adopt the off-site portion of this voluntary rule, it will result in an 11% smaller net benefit estimate for this final rule.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0182.

Section 270.275 requires that applicants for a standardized permit submit to the permitting agency a Notice of Intent that will be used as the basis of the standardized permit application. This information includes:

The Part A permit application required by § 270.13;

A summary of the pre-application public meeting and other materials required by § 124.31;

Documentation of compliance with the location standards of §§ 267.18 and 270.14(b)(11);

Information that allows the Director to carry out his obligations under other Federal laws required in § 270.3;

A closure plan as described in § 267.112;

Solid waste management unit information required by § 270.14(d);

For facilities managing wastes generated off-site, a copy of the waste analysis plan;

For facilities managing wastes generated off-site, documentation showing that the waste generator and the receiving facility are under the same ownership;

A signed certification of the facility's compliance with part 267, as specified at Section. 270.280 and an audit report of the facility's current compliance status; and;

The most recent closure cost estimate and a copy of the documentation required to demonstrate financial responsibility.

EPA needs this information to comprehensively evaluate the potential risk posed by facilities seeking permits. This information aids EPA in meeting its goal of ascertaining and minimizing risks to human health and the environment from hazardous waste management facilities.

In addition, facilities that store or treat hazardous waste under a standardized permit must keep at their facilities general types of information (§ 267.290), as well as unit-specific information for containers (§ 267 Subpart I), tanks (§ 267 Subpart J), and containment buildings (§ 267 Subpart DD), equipment subject to part 264, subpart BB (§ 270.310), and tanks, containers and containment buildings subject to part 264, subpart CC (§ 270.315). EPA anticipates that the owner or operator will use this information to ensure that tanks, containers, containment buildings, and other equipment are in good condition, that operating requirements are being satisfied, and to prevent placing in proximity wastes that are incompatible with other wastes that are likely to ignite or explode. These requirements contribute to EPA's goal of insuring that hazardous waste management facilities are operated in a manner fully protective of human health and the environment. Information collection requirements in the standardized permit rule are authorized by sections 2002 and 3007 of RCRA, as amended. In particular, section 2002 gives the Administrator the authority to promulgate such regulations as are necessary to carry out the functions of this subchapter. Section 3007 gives EPA the authority to compel anyone who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes to ''furnish information related to such wastes'' and make such information available to the government for ''the purposes of * * * enforcing the provisions of this chapter.'' EPA believes the information collection requirements in this rule are consistent with the Agency's responsibility to protect human health and the environment.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that would be requested pursuant to the proposed information collection requirements. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. Further, no questions of a sensitive nature are included in the proposed information collection requirements.

EPA estimates that a future 3-year average annual 175 (permitted, interim status, and new) on-site captive TSDFs per year will apply for a RCRA standardized permit in the years after its implementation (not counting a small additional amount of eligible federal facilities which are excluded from ICRs). The Agency has not estimated the burden for eligible off-site facilities. In the ICR, EPA estimates average annual respondent burden to be about 14,400 hours at an annual cost of $1.42 million, and average annual agency (EPA/state) burden to be about 11,200 hours at an annual cost of $0.58 million (which on a combined bases totals 25,600 hours/year at $2.0 million/year). Assuming each eligible TSDF responds once annually (*i.e.* process a RCRA permit action), the average burden per response would be 82 hours. It is important to note that these ICR burden estimates are absolute magnitudes, not incremental; *i.e.* these estimates do not net-out the baseline burden of the existing conventional RCRA permitting process, as was done in the economic analysis summarized a few sections above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201, (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The final rule is expected to provide net annual benefits (in the form of administrative paperwork burden reduction cost savings) from the voluntary participation by eligible facilities in the private sector. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities eligible for the rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule which must have a written statement, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes an explanation with the final rule. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not authorized for the RCRA program and therefore will not be implementing these rules.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Rather, it would provide more flexibility for States to implement already-existing requirements in the RCRA permitting program. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There is no impact to tribal governments as a result of the standardized permit. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pubic Law 104–113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not establish any new technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and the National Environmental Justice Advisory Council, we have initiated efforts to incorporate environmental justice into our policies and programs. We are committed to addressing environmental justice concerns and have assumed a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. Our goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of our policies, programs, and activities, and that all people live in clean and sustainable communities. To address this goal, we considered the impacts of this rule on low-income populations and minority populations.

We concluded that today's final rule will meet environmental justice goals because the public involvement process set forth in today's rule provides the opportunity for all potentially affected segments of the population to participate in public hearings and/or to provide comment on health and environmental concerns that may arise pursuant to a permitting action.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after publication in the **Federal Register**.

VIII. List of References

1. RCRA Standardized Permit Rule Response to Comments Document. EPA Office of Solid Waste, Permits and State Programs Division. March 2005.

2. RCRA Part A Application. EPA/8700–23, May 2002.

3. Economics Background Document: Estimate of Potential National Regulatory Cost Savings for USEPA's RCRA Hazardous Waste Management ''Standardized'' Permit Final Rule, EPA Office of Solid Waste, Economics, Methods & Risk Analysis Division, March 29, 2005.

4. Protocol for Conducting Environmental Compliance Audits of Treatment, Storage and Disposal Facilities under the Resource Conservation and Recovery Act, EPA–305–B–98–006 (December 1998).

5. Procedures for Conducting Compliance Audit Required by 40 CFR 270.275(f). EPA Office of Enforcement and Compliance Assurance.

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Hazardous waste, RCRA permits.

40 CFR Part 260

Hazardous waste management system.

40 CFR Part 261

Identification and listing of hazardous waste.

40 CFR Part 267

Corrective action, Financial assurance, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements, Standardized permit requirements.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Incorporation by reference, Permit application and modification procedures, RCRA permits, Standardized permit requirements.

Dated: July 28, 2005.

Stephen L. Johnson,

Administrator.

■ For reasons stated in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 124—PROCEDURES FOR DECISION MAKING

■ 1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

■ 2. Section 124.1 is amended by revising paragraph (b) to read as follows:

§ 124.1 Purpose and scope.

* * * * *

(b) Part 124 is organized into five subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these provisions. Subparts B through D and Subpart G supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for

administrative appeal of the final permit decisions. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D contains specific procedural requirements for NPDES permits. Subpart G contains specific procedural requirements for RCRA standardized permits, which, in some instances, change how the General Program Requirements of subpart A apply in the context of the RCRA standardized permit.

* * * * *

■ 3. Section 124.2 is amended by revising the definition of ''Permit'' in paragraph (a) and adding a definition for a ''Standardized permit'' in alphabetical order to read as follows:

§ 124.2 Definitions.

(a) * * *

Permit means an authorization, license or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271 of this chapter. ''Permit'' includes RCRA ''permit by rule'' (§ 270.60), RCRA standardized permit (§ 270.67), UIC area permit (§ 144.33), NPDES or 404 ''general permit'' (§§ 270.61, 144.34, and 233.38). Permit does not include RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a ''draft permit'' or a ''proposed permit.''

* * * * *

Standardized permit means a RCRA permit authorizing management of hazardous waste issued under subpart G of this part and part 270, subpart J. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

* * * * *

■ 4. Section 124.5 is amended by revising paragraph (c)(1) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

* * * * *

(c) (*Applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 (other than § 270.41(b)(3)) or § 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

* * * * *

■ 5. Section 124.31 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a ''significant change'' is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section shall also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 part 270, subpart J), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at § 124.211(c). The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J), the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b), or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J).

* * * * *

■ 6. Section 124.32 is amended by revising paragraph (a) to read as follows:

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR part 270, subpart J)). The requirements of this section also do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

* * * * *

■ 7. Subpart G is added to read as follows:

Subpart G—Procedures for RCRA Standardized Permit

General Information About Standardized Permits

Sec.

124.200 What is a RCRA standardized permit?

124.201 Who is eligible for a standardized permit?

Subpart G—Procedures for RCRA Standardized Permit

General Information About Standardized Permits

§ 124.200 What is a RCRA standardized permit?

The standardized permit is a special form of RCRA permit, that may consist of two parts: A uniform portion that the Director issues in all cases, and a supplemental portion that the Director issues at his or her discretion. We formally define the term ''Standardized permit'' in § 124.2.

(a) What comprises the uniform portion? The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit(s) you are operating at your facility, that EPA has promulgated in 40 CFR part 267 (Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit). If you intend to operate under the standardized permit, you must comply with these nationally applicable terms and conditions.

(b) What comprises the supplemental portion? The supplemental portion of a standardized permit consists of site-specific terms and conditions, beyond those of the uniform portion, that the Director may impose on your particular facility, as necessary to protect human health and the environment. If the Director issues you a supplemental portion, you must comply with the site-specific terms and conditions it imposes.

(1) When required under § 267.101, provisions to implement corrective action will be included in the supplemental portion.

(2) Unless otherwise specified, these supplemental permit terms and conditions apply to your facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

§ 124.201 Who is eligible for a standardized permit?

(a) You may be eligible for a standardized permit if:

(1) You generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then you store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) In either case, the Director will inform you of your eligibility when a decision is made on your permit.

(b) [Reserved]

Applying for a Standardized Permit

§ 124.202 How do I as a facility owner or operator apply for a standardized permit?

(a) You must follow the requirements in this subpart as well as those in § 124.31, 40 CFR 270.10, and 40 CFR part 270, subpart J.

(b) You must submit to the Director a written Notice of Intent to operate under the standardized permit. You must also include the information and certifications required under 40 CFR part 270, subpart J.

§ 124.203 How may I switch from my individual RCRA permit to a standardized permit?

Where all units in the RCRA permit are eligible for the standardized permit, you may request that your individual permit be revoked and reissued as a standardized permit, in accordance with § 124.5. Where only some of the units in the RCRA permit are eligible for the standardized permit, you may request that your individual permit be modified to no longer include those units and issue a standardized permit for those units in accordance with § 124.204.

Issuing a Standardized Permit

§ 124.204 What must I do as the Director of the regulatory agency to prepare a draft standardized permit?

(a) You must review the Notice of Intent and supporting information submitted by the facility owner or operator.

(b) You must determine whether the facility is or is not eligible to operate under the standardized permit.

(1) If the facility is eligible for the standardized permit, you must propose terms and conditions, if any, to include in a supplemental portion. If you determine that these terms and conditions are necessary to protect human health and the environment and cannot be imposed, you must tentatively deny coverage under the standardized permit.

(2) If the facility is not eligible for the standardized permit, you must tentatively deny coverage under the standardized permit. Cause for ineligibility may include, but is not limited to, the following:

(i) Failure of owner or operator to submit all the information required under § 270.275.

(ii) Information submitted that is required under § 270.275 is determined to be inadequate.

(iii) Facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(iv) Demonstrated history of significant non-compliance with applicable requirements.

(v) Permit conditions cannot ensure protection of human health and the environment.

(c) You must prepare your draft permit decision within 120 days after receiving the Notice of Intent and supporting documents from a facility owner or operator. Your tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision. You are allowed a one time extension of 30 days to prepare the draft permit decision. When the use of the 30-day extension is anticipated, you should inform the permit applicant during the initial 120-day review period. Reasons for an extension may include, but is not limited to, needing to complete review of submissions with the Notice of Intent (*e.g.*, closure plans, waste analysis plans, for facilities seeking to manage hazardous waste generated off-site).

(d) Many requirements in subpart A of this part apply to processing the standardized permit application and preparing your draft permit decision. For example, your draft permit decision must be accompanied by a statement of basis or fact sheet and must be based on the administrative record. In preparing your draft permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(1) Section 124.1 Purpose and Scope. All paragraphs.

(2) Section 124.2 Definitions. All paragraphs.

(3) Section 124.3 Application for a permit. All paragraphs, except paragraphs (c), (d), (f), and (g) of this section apply.

(4) Section 124.4 Consolidation of permit processing. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(5) Section 124.5 Modification, revocation and re-issuance, or termination of permits. Not applicable.

(6) Section 124.6 Draft permits. This section does not apply to the RCRA standardized permit; procedures in this subpart apply instead.

(7) Section 124.7 Statement of basis. The entire section applies.

(8) Section 124.8 Fact sheet. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(9) Section 124.9 Administrative record for draft permits when EPA is the permitting authority. All paragraphs apply; however, in the context of the RCRA standardized permit, the reference to draft permits is § 24.204(c) instead of § 124.6.

(10) Section 124.10 Public notice of permit actions and public comment period. Only §§ 124.10(c)(1)(ix) and (c)(1)(x)(A) apply to the RCRA standardized permit. Most of § 124.10 does not apply to the RCRA standardized permit; §§ 124.207, 124.208, and 124.209 apply instead.

§ 124.205 What must I do as the Director of the regulatory agency to prepare a final standardized permit?

As Director of the regulatory agency, you must consider all comments received during the public comment period (see § 124.208) in making your final permit decision. In addition, many requirements in subpart A of this part apply to the public comment period, public hearings, and preparation of your final permit decision. In preparing a final permit decision, the following provisions of subpart A of this part apply (subject to the following modifications):

(a) Section 124.1 Purpose and Scope. All paragraphs.

(b) Section 124.2 Definitions. All paragraphs.

(c) Section 124.11 Public comments and requests for public hearings. This section does not apply to the RCRA standardized permit; the procedures in § 124.208 apply instead.

(d) Section 124.12 Public hearings. Paragraphs (b), (c), and (d) apply.

(e) Section 124.13 Obligation to raise issues and provide information during the public comment period. The entire section applies; however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(f) Section124.14 Reopening of the public comment period. All paragraphs apply; however, in the context of the RCRA standardized permit, use the following reference: in § 124.14(b)(1) use reference to § 124.204 instead of § 124.6; in § 124.14(b)(3) use reference to § 124.208 instead of § 124.10; in § 124.14(c) use reference to § 124.207 instead of § 124.10.

(g) Section 124.15 Issuance and effective date of permit. All paragraphs apply, however, in the context of the RCRA standardized permit, the reference to the public comment period is § 124.208 instead of § 124.10.

(h) Section 124.16 Stays of contested permit conditions. All paragraphs apply.

(i) Section 124.17 Response to comments. This section does not apply to the RCRA standardized permit; procedures in § 124.209 apply instead.

(j) Section 124.18 Administrative record for final permit when EPA is the permitting authority. All paragraphs apply, however, use reference to § 124.209 instead of § 124.17.

(k) Seciton124.19 Appeal of RCRA, UIC, NPDES, and PSD permits. All paragraphs apply.

(l) Section 124.20 Computation of time. All paragraphs apply.

§ 124.206 In what situations may I require a facility owner or operator to apply for an individual permit?

(a) Cases where you may determine that a facility is not eligible for the standardized permit include, but are not limited to, the following:

(1) The facility does not meet the criteria in § 124.201.

(2) The facility has a demonstrated history of significant non-compliance with regulations or permit conditions.

(3) The facility has a demonstrated history of submitting incomplete or deficient permit application information.

(4) The facility has submitted an incomplete or inadequate materials with the Notice of Intent.

(b) If you determine that a facility is not eligible for the standardized permit, you must inform the facility owner or operator that they must apply for an individual permit.

(c) You may require any facility that has a standardized permit to apply for and obtain an individual RCRA permit. Any interested person may petition you to take action under this paragraph. Cases where you may require an individual RCRA permit include, but are not limited to, the following:

(1) The facility is not in compliance with the terms and conditions of the standardized RCRA permit.

(2) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(d) You may require any facility authorized by a standardized permit to apply for an individual RCRA permit only if you have notified the facility owner or operator in writing that an individual permit application is required. You must include in this notice a brief statement of the reasons for your decision, a statement setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the individual RCRA permit, the facility's standardized permit automatically terminates. You may grant additional time upon request from the facility owner or operator.

(e) When you issue an individual RCRA permit to an owner or operator otherwise subject to a standardized RCRA permit, the standardized permit for their facility will automatically cease to apply on the effective date of the individual permit.

Opportunities for Public Involvement in the Standardized Permit Process

§ 124.207 What are the requirements for public notices?

(a) You, as the Director, must provide public notice of your draft permit decision and must provide an opportunity for the public to submit comments and request a hearing on that decision. You must provide the public notice to:

(1) The applicant;

(2) Any other agency which you know has issued or is required to issue a RCRA permit for the same facility or

activity (including EPA when the draft permit is prepared by the State);

(3) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States;

(4) To everyone on the facility mailing list developed according to the requirements in § 124.10(c)(1)(ix); and

(5) To any units of local government having jurisdiction over the area where the facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of the facility.

(b) You must issue the public notice according to the following methods:

(1) Publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

(2) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; and

(3) Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(c) You must include the following information in the public notice:

(1) The name and telephone number of the contact person at the facility.

(2) The name and telephone number of your contact office, and a mailing address to which people may direct comments, information, opinions, or inquiries.

(3) An address to which people may write to be put on the facility mailing list.

(4) The location where people may view and make copies of the draft standardized permit and the Notice of Intent and supporting documents.

(5) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.

(6) The date that the facility owner or operator submitted the Notice of Intent and supporting documents.

(d) At the same time that you issue the public notice under this section, you must place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the Notice of Intent and supporting documents, and the statement of basis or fact sheet in a location accessible to the public in the vicinity of the facility or at your office.

§ 124.208 What are the opportunities for public comments and hearings on draft permit decisions?

(a) The public notice that you issue under § 124.207 must allow at least 45 days for people to submit written comments on your draft permit decision. This time is referred to as the public comment period. You must automatically extend the public comment period to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(b) During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. If someone wants to request a public hearing, they must submit their request in writing to you. Their request must state the nature of the issues they propose to raise during the hearing.

(c) You must hold a public hearing whenever you receive a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under paragraph (a) of this section. You may also hold a public hearing at your discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(d) Whenever possible, you must schedule a hearing under this section at a location convenient to the nearest population center to the facility. You must give public notice of the hearing at least 30 days before the date set for the hearing. (You may give the public notice of the hearing at the same time you provide public notice of the draft permit, and you may combine the two notices.)

(e) You must give public notice of the hearing according to the methods in § 124.207(a) and (b). The hearing must be conducted according to the procedures in § 124.12(b), (c), and (d).

(f) In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include, but are not limited to, the facility's eligibility for the standardized permit, the tentative supplemental conditions you proposed, and the need for additional supplemental conditions.

§ 124.209 What are the requirements for responding to comments?

(a) At the time you issue a final standardized permit, you must also respond to comments received during the public comment period on the draft permit. Your response must:

(1) Specify which additional conditions (*i.e.*, those in the supplemental portion), if any, you changed in the final permit, and the reasons for the change.

(2) Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (*i.e.*, those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.

(3) Make the comments and responses accessible to the public.

(b) You may request additional information from the facility owner or operator or inspect the facility if you need additional information to adequately respond to significant comments or to make decisions about conditions you may need to add to the supplemental portion of the standardized permit.

(c) If you are the Director of an EPA permitting agency, you must include in the administrative record for your final permit decision any documents cited in the response to comments. If new points are raised or new material supplied during the public comment period, you may document your response to those matters by adding new materials to the administrative record.

§ 124.210 May I, as an interested party in the permit process, appeal a final standardized permit?

You may petition for administrative review of the Director's final permit decision, including his or her decision that the facility is eligible for the standardized permit, according to the procedures of § 124.19. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

Maintaining a Standardized Permit

§ 124.211 What types of changes may I make to my standardized permit?

You may make both routine changes, routine changes with prior Agency approval, and significant changes. For the purposes of this section:

(a) ''Routine changes'' are any changes to the standardized permit that qualify as a class 1 permit modification (without prior Agency approval) under 40 CFR 270.42, Appendix I, and

(b) ''Routine changes with prior Agency approval'' are for those changes to the standardized permit that would qualify as a class 1 modification with prior agency approval, or a class 2

permit modification under 40 CFR 270.42, Appendix I; and

(c) ''Significant changes'' are any changes to the standardized permit that:

(1) Qualify as a class 3 permit modification under 40 CFR 270.42, Appendix I;

(2) Are not explicitly identified in 40 CFR 270.42, Appendix I; or

(3) Amend any terms or conditions in the supplemental portion of your standardized permit.

§ 124.212 What procedures must I follow to make routine changes?

(a) You can make routine changes to the standardized permit without obtaining approval from the Director. However, you must first determine whether the routine change you will make amends the information you submitted under 40 CFR 270.275 with your Notice of Intent to operate under the standardized permit.

(b) If the routine changes you make amend the information you submitted under 40 CFR 270.275 with your Notice of Intent to operate under the standardized permit, then before you make the routine changes you must:

(1) Submit to the Director the revised information pursuant to 40 CFR 270.275(a); and

(2) Provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in § 124.10(c)(1)(ix) and (x).

§ 124.213 What procedures must I follow to make routine changes with prior approval?

(a) Routine changes to the standardized permit with prior Agency approval may only be made with the prior written approval of the Director.

(b) You must also follow the procedures in § 124.212(b)(1)–(2).

§ 124.214 What procedures must I follow to make significant changes?

(a) You must first provide notice of and conduct a public meeting.

(1) Public Meeting. You must hold a meeting with the public to solicit questions from the community and inform the community of your proposed modifications to your hazardous waste management activities. You must post a sign-in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.

(2) Public Notice. At least 30 days before you plan to hold the meeting, you must issue a public notice in accordance with the requirements of § 124.31(d).

(b) After holding the public meeting, you must submit a modification request to the Director that:

(1) Describes the exact change(s) you want and whether they are changes to information you provided under 40 CFR 270.275 or to terms and conditions in the supplemental portion of your standardized permit;

(2) Explain why the modification is needed; and

(3) Includes a summary of the public meeting under paragraph (a) of this section, along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.

(c) Once the Director receives your modification request, he or she must make a tentative determination within 120 days to approve or disapprove your request. You are allowed a one time extension of 30 days to prepare the draft permit decision. When the use of the 30-day extension is anticipated, you should inform the permit applicant during the initial 120-day review period.

(d) After the Director makes this tentative determination, the procedures in § 124.205 and §§ 124.207 through 124.210 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 8. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, and 6974.

■ 9. In § 260.10, the first sentence of paragraph (2) of the definition of ''facility'' is revised to read as follows:

§ 260.10 Definitions.

* * * * *

Facility * * *

* * * * *

(2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. * * *

* * * * *

■ 9a. Sections 260.11(c)(1), (c)(3)(xxvii), and (d)(1) are revised to read as follows:

§ 260.11 References.

* * * * *

(c) * * *

(1) ''APTI Course 415: Control of Gaseous Emissions,'' EPA Publication EPA–450/2–81–005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25, 270.310(d)(3).

* * * * *

(3) * * *

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

* * * * *

(d) * * *

(1) ''Flammable and Combustible Liquids Code'' (1977 or 1981), IBR approved for §§ 264.198, 265.198, 267.202(b).

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 10. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

■ 11. Section 261.7(a)(1) is revised to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: (i) an empty container; or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 265, 267, 268, 270, or 124 this chapter or to the notification requirements of section 3010 of RCRA.

* * * * *

■ 12. Part 267 is added to read as follows:

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

Subpart A—General

Sec.

Subpart B—General Facility Standards

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

Subpart A—General

§ 267.1 What are the purpose, scope and applicability of this part?

(a) The purpose of this part is to establish minimum national standards which define the acceptable management of hazardous waste under a 40 CFR part 270, subpart J standardized permit.

(b) This part applies to owners and operators of facilities who treat or store hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided otherwise in 40 CFR part 261, subpart A, or 40 CFR 264.1(f) and (g).

§ 267.2 What is the relationship to interim status standards?

If you are a facility owner or operator who has fully complied with the requirements for interim status—as defined in section 3005(e) of RCRA and regulations under 40 CFR 270.70—you must comply with the regulations specified in 40 CFR part 265 instead of the regulations in this part, until final administrative disposition of the standardized permit application is made, except as provided under 40 CFR part 264, subpart S.

§ 267.3 How does this part affect an imminent hazard action?

Notwithstanding any other provisions of this part, enforcement actions may be brought pursuant to section 7003 of RCRA.

Subpart B—General Facility Standards

§ 267.10 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.11 What must I do to comply with this subpart?

To comply with this subpart, you must obtain an identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

§ 267.12 How do I obtain an identification number?

You must apply to EPA for an EPA identification number following the EPA notification procedures and using EPA form 8700–12. You may obtain information and required forms from your state hazardous waste regulatory agency or from your EPA regional office.

§ 267.13 What are my waste analysis requirements?

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this part and 40 CFR part 268.

(1) You may include data in the analysis that was developed under 40 CFR part 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. If you receive wastes generated from off-site, and are eligible for a standardized permit, you also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of 40 CFR part 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified in 40 CFR 264.17, 264.1034(d), 264.1063(d), and 264.1083.

§ 267.14 What are my security requirements?

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility.

(b) Your facility must have:

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) You must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend ''Danger—Unauthorized Personnel Keep Out.'' The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than ''Danger—Unauthorized Personnel Keep Out'' if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

§ 267.15 What are my general inspection requirements?

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and 40 CFR 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

§ 267.16 What training must my employees have?

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment

(ii) Key parameters for automatic waste feed cut-off systems.

(iii) Communications or alarm systems.

(iv) Response to fires or explosions.

(v) Response to ground water contamination incidents.

(vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open flames to specially designated locations.

(3) ''No Smoking'' signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

§ 267.18 What are the standards for selecting the location of my facility?

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) ''Fault'' means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) ''Displacement'' means the relative movement of any two sides of a fault measured in any direction.

(3) ''Holocene'' means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

Note to paragraph (a)(3): Procedures for demonstrating compliance with this standard are specified in 40 CFR 270.14(b)(11). Facilities which are located in political jurisdictions other than those listed in appendix VI of 40 CFR part 264, are assumed to be in compliance with this requirement.

(b) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(1) ''100-year flood plain'' means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) ''Washout'' means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) ''100-year flood'' means a flood that has a one percent chance of being equaled or exceeded in any given year.

Subpart C—Preparedness and Prevention

§ 267.30 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.31 What are the general design and operation standards?

You must design, construct, maintain, and operate your facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

§ 267.32 What equipment am I required to have?

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals),

spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

§ 267.33 What are the testing and maintenance requirements for the equipment?

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

§ 267.34 When must personnel have access to communication equipment or an alarm system?

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.

§ 267.35 How do I ensure access for personnel and equipment during emergencies?

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

§ 267.36 What arrangements must I make with local authorities for emergencies?

(a) You must attempt to make the following arrangements, as appropriate, for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

Subpart D—Contingency Plan and Emergency Procedures

§ 267.50 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.51 What is the purpose of the contingency plan and how do I use it?

(a) You must have a contingency plan for your facility. You must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

§ 267.52 What must be in the contingency plan?

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, you need only amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this part.

§ 267.53 Who must have copies of the contingency plan?

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

§ 267.54 When must I amend the contingency plan?

You must review, and immediately amend the contingency plan, if necessary, whenever:

(a) The facility permit is revised.

(b) The plan fails in an emergency.

(c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

(d) You change the list of emergency coordinators.

(e) You change the list of emergency equipment.

§ 267.55 What is the role of the emergency coordinator?

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

§ 267.56 What are the required emergency procedures for the emergency coordinator?

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarm or communication systems, where applicable, to notify all facility personnel, and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

(1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(c) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/ 424–8802). The report must include:

(i) Name and telephone number of the reporter.

(ii) Name and address of facility.

(iii) Time and type of incident (for example, a release or a fire).

(iv) Name and quantity of material(s) involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

§ 267.57 What must the emergency coordinator do after an emergency?

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

§ 267.58 What notification and recordkeeping must I do after an emergency?

(a) You must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with § 267.57(b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Regional Administrator. You must include the following in the report:

(1) The name, address, and telephone number of the owner or operator.

(2) The name, address, and telephone number of the facility.

(3) The date, time, and type of incident (*e.g.*, fire, explosion).

(4) The name and quantity of material(s) involved.

(5) The extent of injuries, if any.

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(7) The estimated quantity and disposition of recovered material that resulted from the incident.

Subpart E—Recordkeeping, Reporting, and Notifying

§ 267.70 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that stores or non-thermally treats a hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of 40 CFR part 262 whenever a shipment of hazardous waste is initiated from your facility.

§ 267.71 Use of the manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in § 267.72(a)) on each copy of the manifest;

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the

manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 267.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the Agency does not intend that the owner or operator of a facility whose procedures under § 267.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 267.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator. Note that § 262.23(c) of this chapter requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment); and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The Agency notes that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

§ 267.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight; and

(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.*, with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

§ 267.73 What information must I keep?

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of 40 CFR part 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and 40 CFR 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.58(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subpart F of this part and §§ 267.191, 267.193, 267.195, and 40 CFR 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under 40 CFR 268.7; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under 40 CFR 268.7.

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

§ 267.74 Who sees the records?

(a) You must furnish all records, including plans, required under this part upon the request of any officer, employee, or representative of EPA who is duly designated by the Administrator, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Administrator.

§ 267.75 What reports must I prepare and to whom do I send them?

You must prepare a biennial report and other reports listed in paragraph (b) of this section.

(a) Biennial report. You must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA form 8700–13B. The report must cover facility activities during the previous calendar year and must include:

(1) The EPA identification number, name, and address of the facility;

(2) The calendar year covered by the report;

(3) The method of treatment or storage for each hazardous waste;

(4) The most recent closure cost estimate under § 267.142;

(5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.

(6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(7) The certification signed by you.

(b) Additional reports. In addition to submitting the biennial reports, you must also report to the Regional Administrator:

(1) Releases, fires, and explosions as specified in § 267.58(b);

(2) Facility closures specified in § 267.117; and

(3) As otherwise required by subparts I, J, and DD of this part and part 264, subparts AA, BB, CC.

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator.

§ 267.76 What notifications must I make?

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this part and 40 CFR part 270, subpart J.

Subpart F—Releases from Solid Waste Management Units

§ 267.90 Who must comply with this section?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under 40 CFR 264.101.

§ 267.91–267.100 [Reserved]

§ 267.101 What must I do to address corrective action for solid waste management units?

(a) You must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Regional Administrator will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and 40 CFR part 264, subpart S. The Regional Administrator will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Regional Administrator that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off -site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

Subpart G—Closure

§ 267.110 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste under a 40 CFR part 270, subpart J standardized permit, except as provided in § 267.1(b).

§ 267.111 What general standards must I meet when I stop operating the unit?

You must close the storage and treatment units in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Meets the closure requirements of this subpart and the requirements of §§ 267.176, 267.201, and 267.1108. If you determine that, when applicable, the closure requirements of § 267.201(tanks) or § 267.1108 (containment buildings) cannot be met, then you must close the unit in accordance with the requirements that apply to landfills (§ 264.310). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and you must apply for a post-closure care permit in accordance with 40 CFR part 270.

§ 267.112 What procedures must I follow?

(a) To close a facility, you must follow your approved closure plan, and follow notification requirements.

(1) Your closure plan must be submitted at the time you submitted your Notice of Intent to operate under a standardized permit. Final issuance of the standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the RCRA standardized permit.

(2) The Director's approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.

(b) Satisfy the requirements for content of closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility subject to this subpart will be closed following § 267.111.

(2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.

(3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and/or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure.

These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

(5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

(6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

(7) For facilities that use trust funds to establish financial assurance under § 267.143 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) You may submit a written notification to the Director for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 40 CFR 124.211.

(1) Events leading to a change in the closure plan, and therefore requiring a modification, may include:

(i) A change in the operating plan or facility design;

(ii) A change in the expected year of closure, if applicable; or

(iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

(2) The written notification or request must include a copy of the amended closure plan for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211 and 270.320.

(d) Notification before final closure. (1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage area, or containment building.

(2) The date when you ''expect to begin closure'' must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility's permit is terminated, or if you are otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

§ 267.113 Will the public have the opportunity to comment on the plan?

(a) The Director will provide you and the public, when the draft standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by 40 CFR 124.208. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan, and the permit.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

§ 267.114 [Reserved]

§ 267.115 After I stop operating, how long until I must close?

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Director may approve an extension of 180 days to the closure period if you comply with all applicable requirements for requesting a modification to the permit and demonstrate that:

(1) The final closure activities will take longer than 180 days to complete due to circumstances beyond your control, excluding ground water contamination; and

(2) You have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(3) The demonstration must be made at least 30 days prior to the expiration of the initial 180-day period.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

§ 267.116 What must I do with contaminated equipment, structure, and soils?

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of 40 CFR part 262.

§ 267.117 How do I certify closure?

Within 60 days of the completion of final closure of each unit under a part 270 subpart J standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent registered professional engineer must sign the certification. You must furnish documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under § 267.143(i).

Subpart H—Financial Requirements

§ 267.140 Who must comply with this subpart, and briefly, what do they have to do?

(a) The regulations in this subpart apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or § 267.140(d) below.

(b) The owner or operator must:

(1) Prepare a closure cost estimate as required in § 267.142;

(2) Demonstrate financial assurance for closure as required in § 267.143; and

(3) Demonstrate financial assurance for liability as required in § 267.147.

(c) The owner or operator must notify the Regional Administrator if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code (See also § 267.148).

(d) States and the Federal government are exempt from the requirements of this subpart.

§ 267.141 Definitions of terms as used in this subpart.

(a) *Closure plan* means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) *Current closure cost estimate* means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) *Parent corporation* means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a ''subsidiary'' of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current plugging and abandonment cost estimate means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this chapter.

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Tangible net worth means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements, the terms *bodily injury and property damage* shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

Accidental occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

Legal defense costs means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

Sudden accidental occurrence means an occurrence which is not continuous or repeated in nature.

(h) *Substantial business relationship* means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A ''substantial business relationship'' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

§ 267.142 Cost estimate for closure.

(a) The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see § 267.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 267.142(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraphs (a) and (c) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

§ 267.143 Financial assurance for closure.

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Regional Administrator will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) *Closure Trust Fund.* Owners and operators can use the ''closure trust fund,'' that is specified in 40 CFR 264.143(a)(1) and (2), and 264.143(a)(6)–(11). For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the ''pay-in period.''

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Regional Administrator before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is

Next Payment = (Current Closure Estimate − Current Value of the Trust Fund) Divided by Years Remaining in the Pay-In Period.

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in 40 CFR 264.151(a)(1).

(b) *Surety Bond Guaranteeing Payment into a Closure Trust Fund.* Owners and operators can use the ''surety bond guaranteeing payment into a closure trust fund,'' as specified in 40 CFR 264.143(b), including the use of the surety bond instrument specified at 40 CFR 264.151(b), and the standby trust specified at 40 CFR 264.143(b)(3).

(c) *Surety Bond Guaranteeing Performance of Closure.* Owners and operators can use the ''surety bond guaranteeing performance of closure,'' as specified in 40 CFR 264.143(c), the submission and use of the surety bond instrument specified at 40 CFR 264.151(c), and the standby trust specified at 40 CFR 264.143(c)(3).

(d) *Closure Letter of Credit.* Owners and operators can use the ''closure letter of credit'' specified in 40 CFR 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in 40 CFR 264.151(d), and the standby trust specified in 40 CFR 264.143(d)(3).

(e) *Closure Insurance.* Owners and operators can use ''closure insurance,'' as specified in 40 CFR 264.143(e), utilizing the certificate of insurance for closure specified at 40 CFR 264.151(e).

(f) *Corporate financial test.* An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) *Financial component.*

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section), including guarantees, covered by a financial test plus $10 million, except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) $10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Regional Administrator.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(1) of this section.

(2) *Recordkeeping and reporting requirements.*

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that:

(*1*) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(*i*) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147;

(*ii*) Cost estimates required for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(*iii*) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(*iv*) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(*v*) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(*vi*) Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(*vii*) Any other environmental obligations that are assured through a financial test.

(*2*) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next

sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Corporate Guarantee.*

(1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a ''substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in 40 CFR 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) For a new facility, the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before the owner or operator places waste in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Regional Administrator, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Regional Administrator. If the owner or operator fails to provide alternate financial assurance and obtain the

written approval of such alternative assurance from the Regional Administrator within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Regional Administrator within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Regional Administrator for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Regional Administrator for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) *Use of Multiple Financial Mechanisms.* An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) respectively of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

(i) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial mechanism for multiple facilities, as specified in § 264.143(h) of this chapter.

(j) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

§ 267.144–267.146 [Reserved]

§ 267.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1) through (a)(7) of this section:

(1) *Trust fund for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) *Surety bond for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) *Letter of credit for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) *Insurance for liability coverage.* An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) *Financial test for liability coverage.* An owner or operator may meet the requirements of this section by passing a financial test as specified in paragraph (f) of this section.

(6) *Guarantee for liability coverage.* An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) *Combination of mechanisms.* An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Regional Administrator in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b)–(d) [Reserved]

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

(f) *Financial test for Liability Coverage.* An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) *Financial component.*

(i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus $10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under § 267.143(f), through a financial test must meet the requirements of § 267.143(f).

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Regional Administrator:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit under § 267, the letter should use the wording in § 267.151(b). If the firm is providing only liability coverage through a financial test for facilities regulated under § 267 and also § 264 or § 265, it should use the letter in § 264.151(g). If the firm is providing liability coverage through a financial test for a facility or facilities with a permit under § 267, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in § 267.151(a) for the facilities issued a permit under § 267.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Regional Administrator may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Regional Administrator deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Regional Administrator does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section (§ 267.147) within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Regional Administrator at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days following the close of the owner or operator's fiscal year. The Regional Administrator may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Regional Administrator finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as ''guarantee.'' The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a ''substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation

of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated, and each State in which a facility covered by the guarantee is located, have submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and 40 CFR 264.151(h)(2) is a legally valid and enforceable obligation in that State.

§ 267.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of § 267.143 or § 267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

§ 267.149 [Reserved]

§ 267.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 267.143 or § 267.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

§ 267.151 Wording of the instruments.

(a) The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in § 267.143(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in [insert ''subpart H of 40 CFR part 267'' or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having [insert ''a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's'' or ''a ratio of less than 1.50 comparing total liabilities to net worth'' or ''a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.'']

This firm [insert ''is required'' or ''is not required''] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: ''This firm has a rating of its senior unsecured debt of'' [insert the bond rating] ''from'' [insert ''Standard and Poor's'' or ''Moody's'']. Complete Line 1. Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled *Obligations Covered by a Financial Test or Corporate Guarantee.]*

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

*1. Total Liabilities	$_____
*2. Net Worth	$_____
*3. Net Income	$_____
*4. Depreciation	$_____
*5. Depletion (if applicable)	$_____
*6. Amortization	$_____
*7. Sum of Lines 3., 4., 5. & 6	$_____

[If the above figures are taken directly from the most recent audited financial statements for this firm insert ''The above figures are taken directly from the most recent audited financial statements for this firm.'' If they are not, insert ''The following items are not taken directly from the firms most recent audited financial statements'' [insert the numbers of the items and attach an explanation of how they were derived.]

[Complete the following calculations]

8. Line 1. ÷ Line 2. = ... _____
9. Line 7. ÷ Line 1. = ... _____

Is Line 8. less than 1.5? ____ Yes ____No

Is Line 9 greater than 0.10? ..... ____ Yes ____No

[If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you must notify the permitting authority for the facility that you intend to establish alternate financial assurance as specified in 40 CFR 267.143. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within 120 days after the end of such fiscal year.]

Obligations Covered by a Financial Test or Corporate Guarantee

[On the following lines list all obligations that are covered by a financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID	State	Closure	Post-Closure	Corrective Action
_____	_____	$_____	$_____	$_____
_____	_____	_____	_____	_____

Hazardous Waste Third Party Liability $_____

Municipal Waste Facilities	State	Closure	Post-Closure	Corrective Action
_____	_____	$_____	$_____	$_____
_____	_____	_____	_____	_____

Underground Injection Control	State	Plugging action
	_____	$_____

Petroleum Underground Storage Tanks _____

PCB Storage Facility Name and ID	State	Closure
	_____	$_____

Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act.

Site name	State	Amount
_____	_____	$_____

Any other environmental obligations that are assured through a financial test.

Name	Amount
_____	$_____
*10. Total of all amounts	$_____
*11. Line 10 + $10,000,000 =	$_____
*12. Total Assets	$_____
*13. Intangible Assets	$_____
*14. Tangible Assets (Line 12. − Line 13)	$_____
*15. Tangible Net Worth (Line 14. − Line 1.)	$_____
*16. Assets in the United States	$_____

Is Line 15 greater than Line 11? ____Yes ____No

Is Line 16 no less than Line 10? ____Yes ____No

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located. In addition, a signed copy must be sent to every authority who (1) requires a demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

(b)The chief financial officer of an owner or operator of a facility with a standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other standardized permit) facility(ies) must complete a letter as specified in Section 267.147(f) of this chapter. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for third party liability, as specified in [insert ''subpart

H of 40 CFR part 267'' or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least $10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage.

This firm [insert ''is required'' or ''is not required''] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Please complete the following section.]

*1. Total Assets	$_____
*2. Intangible Assets	$_____
*3. Tangible Assets (Line 1 − Line 2)	$_____
*4. Total Liabilities	$_____
5. Tangible Net Worth (Line 3 − Line 4)	$_____
*6. Assets in the United States	$_____
7. Amount of liability coverage	$_____

Is Line 5 At least $10 million greater than Line 7?	____Yes ____No
Is Line 6 at least equal to Line 7?	____Yes ____No

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility(ies) is(are) located.]

Subpart I—Use and Management of Containers

§ 267.170 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containers under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b).

§ 267.171 What standards apply to the containers?

Standards apply to the condition of the containers, to the compatibility of waste with the containers, and to the management of the containers.

(a) Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

(1) Transfer the hazardous waste from this container to a container that is in good condition; or

(2) Manage the waste in some other way that complies with the requirements of this part.

(b) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) Management of containers. (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

§ 267.172 What are the inspection requirements?

At least weekly, you must inspect areas where you store containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

§ 267.173 What standards apply to the container storage areas?

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system, must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes, even if the wastes do not contain free liquids.

§ 267.174 What special requirements must I meet for ignitable or reactive waste?

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

§ 267.175 What special requirements must I meet for incompatible wastes?

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to 40 CFR part 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

§ 267.176 What must I do when I want to stop using the containers?

You must remove all hazardous waste and hazardous waste residues from the

containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

§ 267.177 What air emission standards apply?

You must manage all hazardous waste placed in a container according to the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

Subpart J—Tank Systems

§ 267.190 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in § 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095B (Paint Filter Liquids Test) as described in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

§ 267.191 What are the required design and construction standards for new tank systems or components?

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

(a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.

(b) Hazardous characteristics of the waste(s) to be handled.

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(1) Factors affecting the potential for corrosion, such as:

(i) Soil moisture content.

(ii) Soil pH.

(iii) Soil sulfides level.

(iv) Soil resistivity.

(v) Structure to soil potential.

(vi) Existence of stray electric current.

(vii) Existing corrosion-protection measures (for example, coating, cathodic protection).

(2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.

(ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and

(iii) Electrical isolation devices such as insulating joints, flanges, etc.

(d) Design considerations to ensure that:

(1) Tank foundations will maintain the load of a full tank.

(2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).

(3) Tank systems will withstand the effects of frost heave.

§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?

(a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

(1) Weld breaks.

(2) Punctures.

(3) Scrapes of protective coatings.

(4) Cracks.

(5) Corrosion.

(6) Other structural damage or inadequate construction/installation.

(b) You must remedy all discrepancies before the tank system is placed in use.

§ 267.193 What testing must I do?

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

§ 267.194 What installation requirements must I follow?

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under §§ 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

§ 267.195 What are the secondary containment requirements?

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?

(a) Secondary containment for tanks must include one or more of the following:

(1) A liner (external to the tank).

(2) A double-walled tank.

(3) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

§ 267.197 What are the requirements for ancillary equipment?

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of § 267.195 (a) and (b), except for:

(a) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

§ 267.198 What are the general operating requirements for my tank systems?

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).

(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

§ 267.199 What inspection requirements must I meet?

You must comply with the following requirements for scheduling, conducting, and documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overfill controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

§ 267.200 What must I do in case of a leak or a spill?

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system, you must, within 24 hours after

detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(1) of this section, to the Regional Administrator within 24 hours of its detection. If you have reported the release pursuant to 40 CFR part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound; and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Regional Administrator containing the following information:

(i) The likely route of migration of the release.

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Regional Administrator as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 40 CFR 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Regional Administrator within seven days after returning the tank system to use.

§ 267.201 What must I do when I stop operating the tank system?

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subparts G and H of this part.

§ 267.202 What special requirements must I meet for ignitable or reactive wastes?

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b); and

(ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this chapter; or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association's ''Flammable and Combustible Liquids Code,'' (1977 or 1981), (incorporated by reference, see 40 CFR 260.11).

§ 267.203 What special requirements must I meet for incompatible wastes?

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

§ 267.204 What air emission standards apply?

You must manage all hazardous waste placed in a tank following the requirements of subparts AA, BB, and CC of 40 CFR part 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

Subparts K through CC [Reserved]

Subpart DD—Containment buildings

§ 267.1100 Does this subpart apply to me?

This subpart applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR part 270 subpart J standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

§ 267.1101 What design and operating standards must my containment building meet?

Your containment building must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (*e.g.*, precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and

constructed of manmade materials of sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed.

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d).

(2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(h) You must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

§ 267.1102 What other requirements must I meet to prevent releases?

You must use controls and practices to ensure containment of the hazardous waste within the unit, and must, at a minimum:

(a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.

(b) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.

(d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

§ 267.1103 What additional design and operating standards apply if liquids will be in my containment building?

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

(i) Constructed with a bottom slope of 1 percent or more; and

(ii) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of $3 \times 10–5$ m^2sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

§ 267.1104 How may I obtain a waiver from secondary containment requirements?

Notwithstanding any other provision of this subpart, the Regional Administrator may waive requirements for secondary containment for a permitted containment building where:

(a) You demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

(b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

§ 267.1105 What do I do if my containment building contains areas both with and without secondary containment?

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment.

(c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

§ 267.1106 What do I do if I detect a release?

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), you must:

(1) Enter a record of the discovery in the facility operating record;

(2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

§ 267.1107 Can a containment building itself be considered secondary containment?

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

§ 267.1108 What must I do when I stop operating the containment building?

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 13. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

■ 14. Section 270.1 is amended by adding sentences after the second sentence of paragraph (b) introductory text, and by adding paragraphs (b)(1) and (2) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(b) * * * Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part. * * *

(1) The facility generates hazardous waste and then non-thermally treats or stores hazardous waste on-site in tanks, containers, or containment buildings; or

(2) The facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings.

* * * * *

■ 15. Section 270.2 is amended by revising the definition for ''Permit'' and adding a definition for ''Standardized permit'' in alphabetical order to read as follows:

§ 270.2 Definitions.

* * * * *

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part and parts 271 and 124 of this chapter. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subpart J of this part). Permit does not include RCRA interim status (subpart G of this part), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

* * * * *

Standardized permit means a RCRA permit issued under part 124, subpart G of this chapter and subpart J of this part authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director's discretion.

* * * * *

Subpart B—Permit Application

■ 16. Section 270.10 is amended by revising paragraphs (a) and (h) to read as follows:

§ 270.10 General application requirements.

(a) Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:

(1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.

(2) If you currently have interim status, you must apply for permits when required by the Director.

(3) If you are required to have a permit (including new applicants and permittees with expiring permits), you must complete, sign, and submit an application to the Director, as described in this section and §§ 270.70 through 270.73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in § 270.61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in § 270.65.

(6) If you are seeking a standardized permit, the procedures for application and issuance are found in part 124, subpart G of this chapter and subpart J of this part.

* * * * *

(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you have two options:

(1) You may submit a new application at least 180 days before the expiration date of the effective permit, unless the Director allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director allows a later date. The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2).

* * * * *

Subpart D—Changes to Permits

■ 17. Section 270.40 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 270.40 Transfer of permits.

* * * * *

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42 or as a routine change with prior approval under 40 CFR 124.213. * * *

■ 18. Section 270.41 is amended by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

§ 270.41 Modification or revocation and reissuance of permits.

* * * If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G.* * *

* * * * *

(b) * * *

(3) The Director has received notification under 40 CFR 124.202(b) of a facility owner or operator's intent to be covered by a standardized permit.

* * * * *

Subpart E—Expiration and Continuation of Permits

■ 19. Section 270.51 is amended by adding paragraph (e) to read as follows:

§ 270.51 Continuation of expiring permits.

* * * * *

(e) Standardized permits.

(1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

Subpart F—Special Forms of Permits

■ 20. Add § 270.67 to subpart F to read as follows:

§ 270.67 RCRA standardized permits for storage and treatment units.

RCRA standardized permits are special forms of permits for TSD owners or operators that:

(a) Generate hazardous waste and then non-thermally treat or store the hazardous waste on-site in tanks, containers, or containment buildings; or

(b) Receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under subpart J of this part, part 124 subpart G of this chapter, and part 267 of this chapter.

■ 21. Subpart J is added to part 270 to read as follows:

Subpart J—RCRA Standardized Permits for Storage and Treatment Units

General Information About Standardized Permits

Sec.

Applying for a Standardized Permit

Information That Must Be Kept at Your Facility

Modifying a Standardized Permit

Subpart J—RCRA Standardized Permits for Storage and Treatment Units

General Information About Standardized Permits

§ 270.250 What is a RCRA standardized permit?

A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subpart G and subpart J of this part.

§ 270.255 Who is eligible for a standardized permit?

(a) You may be eligible for a standardized permit if:

(1) You generate hazardous waste and then store or non-thermally treat the hazardous waste on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) We will inform you of your eligibility when we make a decision on your permit application.

(b) [Reserved]

§ 270.260 What requirements of part 270 apply to a standardized permit?

The following subparts and sections of this part 270 apply to a standardized permit:

(a) Subpart A—General Information: All sections.

(b) Subpart B—Permit Application: §§ 270.10, 270.11, 270.12, 270.13 and 270.29.

(c) Subpart C—Permit Conditions: All sections.

(d) Subpart D—Changes to Permit: §§ 270.40, 270.41, and 270.43.

(e) Subpart E—Expiration and Continuation of Permits: All sections.

(f) Subpart F—Special Forms of Permits: § 270.67.

(g) Subpart G—Interim Status: All sections.

(h) Subpart H—Remedial Action Plans: Does not apply.

(i) Subpart J—Standardized Permits: All sections.

Applying for a Standardized Permit

§ 270.270 How do I apply for a standardized permit?

You apply for a standardized permit by following the procedures in 40 CFR part 124, subpart G and this subpart.

§ 270.275 What information must I submit to the permitting agency to support my standardized permit application?

The information in paragraphs (a) through (j) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

(a) The Part A information described in § 270.13.

(b) A meeting summary and other materials required by 40 CFR 124.31.

(c) Documentation of compliance with the location standards of 40 CFR 267.18 and § 270.14(b)(11).

(d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.

(e) Solid waste management unit information required by § 270.14(d).

(f) A certification meeting the requirements of § 270.280, and an audit of the facility's compliance status with 40 CFR part 267 as required by § 270.280.

(g) A closure plan prepared in accordance with part 267, subpart G.

(h) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(i) If you manage wastes generated off-site, the waste analysis plan.

(j) If you manage waste generated from off-site, documentation showing that the waste generator and the off-site facility are under the same ownership.

§ 270.280 What are the certification requirements?

You must submit a signed certification based on your audit of your facility's compliance with 40 CFR part 267.

(a) Your certification must read: I certify under penalty of law that:

(1) I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with 40 CFR part 267, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and preparing the report, I believe that my (include paragraph (a)(1)(i) and (ii) this section, whichever applies):

(i) My existing facility complies with all applicable requirements of 40 CFR part 267 and will continue to comply until the expiration of the permit; or

(ii) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of 40 CFR part 267, and will continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with 40 CFR part 267. A written audit report, signed and certified as accurate by the auditor, must be submitted to the Director with the 40 CFR 124.202(b) Notice of Intent.

Information That Must Be Kept at Your Facility

§ 270.290 What general types of information must I keep at my facility?

You must keep the following information at your facility:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of 40 CFR part 267.

(c) A copy of the waste analysis plan required by 40 CFR 267.13(b).

(d) A description of the security procedures and equipment required by 40 CFR 267.14.

(e) A copy of the general inspection schedule required by 40 CFR 267.15(b). You must include in the inspection schedule applicable requirements of 40 CFR 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(f) A justification of any modification of the preparedness and prevention requirements of 40 CFR part 267, subpart C (§§ 267.30 to 267.35).

(g) A copy of the contingency plan required by 40 CFR part 267, subpart D.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),

(3) Prevent contamination of water supplies,

(4) Mitigate effects of equipment failure and power outages,

(5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and

(6) Prevent releases to atmosphere,

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by 40 CFR 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by 40 CFR 267.16. A brief description of how training will be designed to meet actual job tasks under 40 CFR 267.16(a)(3) requirements.

(m) A copy of the closure plan required by 40 CFR 267.112. Include, where applicable, as part of the plans, specific requirements in 40 CFR 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under 40 CFR 267.142 and a copy of the documentation required to demonstrate financial assurance under 40 CFR 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of 40 CFR 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of 40 CFR 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism, as required by 40 CFR 267.149 or 267.150.

(s) A topographic map showing a distance of 1,000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

(1) Map scale and date.

(2) 100-year flood plain area.

(3) Surface waters including intermittent streams.

(4) Surrounding land uses (residential, commercial, agricultural, recreational).

(5) A wind rose (*i.e.,* prevailing wind-speed and direction).

(6) Orientation of the map (north arrow).

(7) Legal boundaries of your facility site.

(8) Access control (fences, gates).

(9) Injection and withdrawal wells both on-site and off-site.

(10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)

(11) Barriers for drainage or flood control.

(12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas.)

§ 270.300 What container information must I keep at my facility?

If you store or treat hazardous waste in containers, you must keep the following information at your facility:

(a) A description of the containment system to demonstrate compliance with the container storage area provisions of 40 CFR 267.173. This description must show the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with 40 CFR 267.173(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with 40 CFR 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and 40 CFR 267.175(c) (location of incompatible wastes in relation to each other), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with 40 CFR 267.175(a) and (b), and 267.17(b) and (c).

(e) Information on air emission control equipment as required by § 270.315.

§ 270.305 What tank information must I keep at my facility?

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:

(a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under 40 CFR 267.191 and 267.192.

(b) Dimensions and capacity of each tank.

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (*e.g.,* vents).

(d) A diagram of piping, instrumentation, and process flow for each tank system.

(e) A description of materials and equipment used to provide external corrosion protection, as required under 40 CFR 267.191.

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with 40 CFR 267.192 and 267.194.

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of 40 CFR 267.195 and 267.196.

(h) [Reserved].

(i) Description of controls and practices to prevent spills and overflows, as required under 40 CFR 267.198.

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of 40 CFR 267.202 and 267.203.

(k) Information on air emission control equipment as required by § 270.315.

§ 270.310 What equipment information must I keep at my facility?

If your facility has equipment to which 40 CFR part 264, subpart BB applies, you must keep the following information at your facility:

(a) For each piece of equipment to which 40 CFR part 264 subpart BB applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or a pipeline valve).

(4) Percent by weight of total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., monthly leak detection and repair, or equipped with dual mechanical seals).

(b) For facilities that cannot install a closed-vent system and control device to comply with 40 CFR part 264, subpart BB on the effective date that the facility becomes subject to the subpart BB provisions, an implementation schedule as specified in 40 CFR 264.1033(a)(2).

(c) Documentation that demonstrates compliance with the equipment standards in 40 CFR 264.1052 and 264.1059. This documentation must contain the records required under 40 CFR 264.1064.

(d) Documentation to demonstrate compliance with 40 CFR 264.1060 must include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by 40 CFR 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of ''Course 415: Control of Gaseous Emissions'' (incorporated by reference as specified in 40 CFR 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in 40 CFR 264.1035(b)(4)(iii).

(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

§ 270.315 What air emissions control information must I keep at my facility?

If you have air emission control equipment subject to 40 CFR part 264, subpart CC, you must keep the following information at your facility:

(a) Documentation for each floating roof cover installed on a tank subject to 40 CFR 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in 40 CFR 264.1084(e)(1) or (f)(1).

(b) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and your certification that the requirements of this subpart are met.

(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of 40 CFR 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, appendix B.

(d) [Reserved]

(e) Documentation for each closed-vent system and control device installed under requirements of 40 CFR 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).

(f) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), Monitoring methods for control devices, monitoring frequency, procedures for documenting exceedences, and procedures for mitigating noncompliances.

Modifying a Standardized Permit

§ 270.320 How do I modify my RCRA standardized permit?

You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.214.

[FR Doc. 05–16300 Filed 9–7–05; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 291
Disposition of HUD-Acquired Single Family Property; Good Neighbor Next Door Sales Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4712–P–01; HUD–2005–0016]

RIN 2502–AH72

Disposition of HUD-Acquired Single Family Property; Good Neighbor Next Door Sales Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for HUD's new Good Neighbor Next Door (GNND) Sales Program. The requirements for the new program are closely modeled on those for HUD's Officer Next Door (OND) and Teacher Next Door (TND) Sales Programs. The GNND Sales Program would replace and build upon the success of these two existing sales programs. The purpose of the GNND Sales Program is to improve the quality of life in distressed urban communities by encouraging law enforcement officers, teachers, and firefighters/emergency responders whose daily responsibilities and duties represent a nexus to the needs of the community to purchase and live in homes in these communities. Although the requirements governing the new GNND Sales Program would be similar to the existing requirements for the Officer and Teacher Next Door Sales Programs, HUD is also proposing to make several important modifications and improvements to the existing requirements.

DATES: *Comments Due Date:* November 7, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at *www.regulations.gov;* or
- The HUD electronic Web site at *www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A vital part of HUD's mission is to promote homeownership and the revitalization of cities. In support of these goals, HUD established the OND Sales Program. The OND Sales Program enables full-time law enforcement officers to purchase HUD-acquired homes located in revitalization areas at a 50 percent discount from list prices. HUD's regulations for the OND Sales Program are located in subpart F of 24 CFR part 291 (entitled ''Disposition of HUD-Acquired Single Family Properties'').

In June 2004, HUD completed an evaluation of the success of the OND and TND Sales programs, which supported the assumption that an influx of police officers as homeowners does result in a substantial decrease in serious crime in a target neighborhood. HUD's evaluation of the OND/TND Sales programs is available for download at *www.huduser.org.*

The success of the OND Sales Program led to the development of the TND Sales Program. The TND Sales Program, modeled after the OND Sales Program, was designed to enable more teachers to help revitalize economically distressed neighborhoods by encouraging eligible teachers to purchase HUD-acquired homes located in HUD-designated revitalization areas at a 50 percent discount from list prices. HUD announced the creation of the TND Sales Program through a **Federal Register** notice published on December 7, 1999 (64 FR 68370).

II. This Proposed Rule

This proposed rule would establish regulations for the GNND Sales Program. The requirements for the new program are similar to those for the existing OND and TND Sales Programs. The GNND Sales Program would replace and build upon the success of these two existing sales programs. The regulations for the GNND Sales Program would replace the existing OND regulations at 24 CFR part 291, subpart F. The objective of the new program is to improve the quality of life in distressed urban communities by encouraging law enforcement officers, teachers, and firefighters/emergency responders, whose daily responsibilities and duties reflect a high level of public service commitment and represent a nexus to the needs of the community, to purchase and live in homes in these communities.

III. Overview of the GNND Sales Program

Although the requirements governing the new GNND Sales Program would be similar to the existing requirements for the OND and TND programs, HUD is also proposing to make several important modifications and improvements to the current requirements. This section of the preamble provides an overview of the proposed GNND Sales Program and highlights the most significant changes that would be made to the existing requirements by this rule.

1. *General.* The GNND Sales Program will enable a full-time law enforcement officer, teacher, or firefighter/emergency responder (collectively referred to in this rule as ''participants'') to purchase a HUD-acquired home located in a HUD-designated revitalization area at a 50 percent discount from the list price. The participant would also be eligible to purchase the home with a reduced down payment of $100, but only if the participant finances the home through an FHA-insured mortgage.

To be eligible to purchase a home under the GNND Sales Program, the participant (or his/her spouse) may not have owned any residential real property for one year prior to the date of submitting an offer on the home being acquired through the program. Further, the participant (or his/her spouse) must not have previously purchased another home under the GNND Sales Program (or its predecessor OND/TND sales programs). This will help to ensure that the limited inventory of properties available for sale under the GNND Sales

Program are purchased by individuals who do not currently own a home. Although both spouses, if otherwise eligible, may submit an offer on a single property made available for sale under the program, HUD will approve an offer from only one spouse.

Under the current OND/TND requirements, participants are prohibited from owning any residential property (other than the home purchased through the OND or TND sales programs) during the owner occupancy term. Upon reconsideration, HUD has concluded that this requirement imposes an unduly burdensome restriction on business activity. Accordingly, the prohibition on the purchase of other residential property during the owner occupancy term would no longer apply under the GNND Sales Program.

2. *Eligible properties.* Under the GNND Sales Program, all properties acquired by HUD that are located in HUD-designated revitalization areas (both those that are eligible for FHA mortgage insurance and those that are not eligible) will be made available to interested participants prior to listing the properties for sale to other purchasers.

In the event that several offers are made on a single property, HUD will select a winning offer by lottery, as well as a back-up offer in the event the winning offeror is unable to close on the purchase of the property. If the back-up offeror is also unable to close on the purchase of the property, the property will then be made available for sale to other purchasers. Unlike the current OND/TND requirement, GNND offerors will no longer be required to notify HUD of their geographic area of interest and to indicate a preliminary interest in a particular property. This current OND/TND requirement has proven to be an administratively burdensome and inefficient method for determining interest in properties made available for sale under the programs. As a matter of practice, HUD lists properties eligible for purchase separately from other properties, so that they can be more easily identified.

3. *Real Estate Brokers.* Participants must submit offers through a participating real estate broker. In HUD's experience, the business expertise of real estate brokers is beneficial to participants and facilitates the home buying process. Any real estate broker who has agreed to comply with HUD requirements may participate in the GNND Sales Program. Real estate brokers may submit unlimited numbers of offers on an individual property provided each offer is from a different prospective purchaser.

4. *Cap on Program Sales.* HUD proposes to limit the number of HUD-acquired homes sold under the GNND Sales Program in a fiscal year to no greater than five percent of the number of ''Part A'' mortgage insurance conveyance claims paid by HUD in the immediately preceding fiscal year. (Generally, there are two ''parts'' to the payment of an FHA mortgage insurance claim. A Part A claim consists of payment to cover the unpaid principal balance of the mortgage loan and certain interest expenses. A Part B claim, which is paid subsequent to a Part A claim, includes all other expenses covered by the FHA mortgage insurance.)

The cap shall apply on a national basis, but HUD reserves the right to geographically apportion the cap to address regional or local differences in the number of homes sold through the GNND Sales Program. Additionally, HUD retains the flexibility to adjust the percentage of this cap for any fiscal year. Any HUD determination to geographically distribute the cap, change a current geographic distribution, or adjust the percentage of the cap would be announced by HUD through publication of a **Federal Register** notice at least 30 days before the revision takes effect. This provision would allow HUD to respond to disparities or changing circumstances more quickly than might be possible through notice and comment rulemaking procedures, while still ensuring that affected members of the public are provided with advance notice of any changes to the GNND Program sales cap.

HUD believes that the proposed cap on sales will help ensure that sufficient numbers of HUD-acquired properties are available for other departmental property disposition initiatives (such as the programs for discounted sales to nonprofit organizations and government agencies). Further, the proposed limit on properties sold under the GNND Sales Program will better enable HUD to control the program and implement any necessary changes.

5. *Eligible law enforcement officers.* A law enforcement officer would be eligible to purchase a home through the GNND Sales Program if employed full-time by a law enforcement agency of the federal government, a state, a unit of general local government, or an Indian tribal government. Further, in carrying out such full-time employment, the law-enforcement officer must be sworn to uphold, and make arrests for violations of federal, state, tribal, county, township, or municipal law. For purposes of the GNND Sales Program, the term ''unit of general local government'' would be defined to mean a county or parish, city, town, township, or other political subdivision of a state.

As noted above, the officer must be employed by a law-enforcement agency. Officers employed by federal, state, local, or tribal agencies that are not law-enforcement agencies (such as, for example, a public housing authority) would not be eligible to participate under the GNND Sales Program. The employment requirement must be satisfied both at the time the law enforcement officer submits a bid to purchase the home, and at the time of closing on the purchase of the home.

Law enforcement officers employed by public or private colleges and universities would no longer be eligible to participate under the new program. Generally, these law enforcement officers do not have arrest authority beyond the campus and therefore have limited deterrent effect on crime in the communities where they live. Continuing eligibility to include these officers would not achieve the objective of the GNND Sales Program, which is to improve the quality of life in distressed urban communities by having law enforcement officers live in the neighborhoods where they are authorized to make arrests.

The scope of the definition of law enforcement officer has been expanded to include tribal police officers. Tribal police officers are sworn to uphold and make arrests for violations of tribal law. Because tribal police officers have general arrest authority, the presence of tribal police officers would be as beneficial to their communities as that of their counterparts employed by federal, state, or local governments. HUD, therefore, proposes to revise the current regulations to allow tribal police officers to participate in the GNND Sales Program.

6. *Eligible teachers.* A teacher would be eligible to purchase a home through the GNND Sales Program if employed full-time by a state-accredited public school or private school that provides direct services to students in grades pre-kindergarten through 12. The employment requirement must be satisfied both at the time the teacher submits a bid to purchase the home, and at the time of closing on the purchase of the home. The public or private school where the teacher is employed must serve students from the area where the home is located in the normal course of business.

7. *Eligible firefighters/emergency responders.* The GNND Sales Program would include firefighters and

emergency responders as a new class of eligible participants. To qualify as a firefighter/emergency responder, an individual would have to be employed as a full-time firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the federal government, a state, a unit of general local government, or an Indian tribal government serving the area where the home is located. The employment requirement must be satisfied both at the time the firefighter/emergency responder submits a bid to purchase the home, and at the time of closing on the purchase of the home.

8. *Earnest money deposit.* The participant would be required to make an earnest money deposit at the time of submitting an offer to purchase a home. The amount of the earnest money deposit required for a property would be an amount equal to one percent of the list price, but no less than $500 and no more than $2,000.

The earnest money deposit must be in the form of a cash equivalent or a certification from the real estate broker that the earnest money deposit has been deposited in the broker's escrow account. If an offer is accepted, the earnest money deposit would be credited to the purchaser at closing. If the offer is rejected, the earnest money deposit would be returned. Earnest money deposits are subject to total forfeiture upon the participant's failure to close a sale.

9. *Start of owner-occupancy term.* Participants must agree to live in the home purchased through the GNND Sales Program as their sole residence for at least 36 months. This proposed rule would establish new requirements governing the commencement of the required owner-occupancy term. The required start date would be based upon the date of closing and would vary depending on the scope of any repairs necessary for occupancy of the home. Specifically, the proposed rule provides that occupancy of the home must commence within 30 days after the closing date if HUD determines that the home requires no more than $10,000 in repairs prior to occupancy. If HUD determines that the home requires repairs worth more than $10,000 but less than $20,000, occupancy must start within 90 days of the closing date. If HUD determines that the home requires more than $20,000 in repairs, occupancy would be required to commence within 180 days of the closing date. The HUD determination regarding the amount of required repairs will be made solely for purposes of establishing the commencement of the owner-occupancy term, and does not constitute an assurance or guarantee for the benefit of purchaser.

10. *Interruptions to the owner-occupancy term.* HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship. The participant must submit a written and signed request to HUD containing: (1) The reasons why the interruption is necessary; (2) the dates of the intended interruption; and (3) a certification from the participant that he/she is not abandoning the home as his/her permanent residence and will resume occupancy of the home upon the conclusion of the interruption to complete the remainder of the 36-month owner-occupancy term.

The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act of 2003 need not submit their written request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential interruption, in order to ensure timely processing and approval of the request.

11. *Financing purchase of the home.* If the participant uses conventional financing to purchase a home under the GNND Sales Program, the amount of the mortgage may not exceed the discounted sales price of the home. However, a participant using an FHA-insured mortgage to finance purchase of the home may finance reasonable and customary closing costs with the FHA-insured mortgage. The amount of the FHA-insured mortgage may not exceed the discounted sales price of the home plus the closing costs. In no event will HUD pay a buyer's closing costs on the purchase of a property through the GNND Sales Program.

12. *The second mortgage.* A participant must agree to execute a second mortgage and note payable to HUD on the home in the amount of the difference between the list price and the discounted selling price. The term of the second mortgage is equal to the owner-occupancy term (36 months) plus 30, 90, or 180 days, as applicable depending on the amount of repairs required prior to occupancy (see section III.9. of this preamble). The amount of the second mortgage will be reduced by 1/36 on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the second mortgage will be zero. If the participant sells the home or stops living in the home as his/her sole residence prior to the expiration of the owner-occupancy term, the participant will owe HUD the amount due on the second mortgage as of the date the property is sold or vacated.

13. *Refinancing.* This proposed rule would permit a participant to refinance the mortgage used to finance the purchase of his/her home. However, the total of the refinanced mortgage and the remaining principal balance of the second mortgage may not exceed 95 percent of the value of the property, as appraised at the time of the refinancing. The second mortgage must hold a superior lien position to the refinanced mortgage in the absence of a subordination. HUD may permit subordination of the second mortgage, but only if HUD, at its sole discretion, determines that at least one of the following three conditions is satisfied: (1) The refinancing will result in a lower annual percentage rate on the first mortgage; (2) the refinancing is undertaken pursuant to HUD's Section 203(k) Rehabilitation Loan Insurance Program in order to rehabilitate or repair the home; or (3) the refinancing is necessary to prevent the participant from defaulting on the first mortgage.

14. *Multi-unit properties.* Multi-unit properties would continue to be ineligible for purchase under the GNND Sales Program.

15. *Continuing obligations.* To remain a participant in the GNND Sales Program, the participant must, for the entire duration of the owner-occupancy term, continue to own and live in as his/her sole residence the home purchased through the GNND Sales Program. Additionally, the participant must certify initially, and once annually thereafter during and at the conclusion of the owner-occupancy term, that he or she owns, has lived in, and continues to live in the home as his or her sole residence.

16. *Governmental entities and nonprofit organizations.* Under the proposed rule, governmental entities and nonprofit organizations would no longer be eligible to purchase HUD-acquired homes for sale under the GNND Sales Program. Currently, governmental entities and nonprofit organizations may purchase OND and TND properties if they resell these homes directly to eligible law enforcement officers and teachers under the terms and conditions of the OND and TND Sales Programs. HUD believes that limiting participation in the GNND Sales Program to the ultimate purchasers—law enforcement officers, teachers, and firefighters/emergency

responders—will better focus the program and help to ensure that the GNND Sales Program accomplishes its goals.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§§ 291.515, 291.520, 291.525, 291.530, and 291.540	30,100	1	.12	3,612

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4712) and must be sent to both: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947; and, Kathleen McDermott, Reports Liaison Officer, Office of Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–8000.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule promotes safe neighborhoods by enabling law enforcement officers, teachers, and firefighters/emergency responders to purchase HUD-acquired single family homes at a significant discount. The proposed rule places restrictions on the use of a home purchased through the GNND Sales Program, which affects the individual purchasing the home. The proposed rule, however, does not place restrictions on any small entities involved in any transactions related to the GNND Sales Program. Accordingly, the undersigned certifies that this

proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described by this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the Officer Next Door Program is 14.198. The Catalog of Federal Domestic Assistance Number for the Teacher Next Door Initiative is 14.310.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. Subpart F is revised to read as follows:

Subpart F—Good Neighbor Next Door Sales Program

Sec.

Subpart F—Good Neighbor Next Door Sales Program

§ 291.500 Purpose.

This subpart describes the policies and procedures governing the Good Neighbor Next Door (GNND) Sales program. The purpose of the GNND Sales Program is to improve the quality of life in distressed urban communities. This is to be accomplished by encouraging law enforcement officers, teachers, and firefighters/emergency responders, whose daily responsibilities and duties represent a nexus to the needs of the community, to purchase and live in homes in these communities.

§ 291.505 Definition of ''unit of general local government.''

For purposes of this subpart, the term ''unit of general local government'' means a county or parish, city, town, township, or other political subdivision of a state.

§ 291.510 Overview of the GNND Sales Program.

(a) *General.* The GNND Sales Program enables a full-time law enforcement officer, teacher, or firefighter/emergency responder to purchase a specifically designated HUD-acquired home located in a HUD-designated revitalization area:

(1) At a 50 percent discount from the list price; and

(2) With a downpayment of $100, but only if the law enforcement officer, teacher, or firefighter/emergency responder finances the home through a Federal Housing Administration (FHA) insured mortgage.

(b) *Eligible properties.* Under the GNND Sales Program, all properties acquired by HUD located in HUD-designated revitalization areas (both those that are eligible for FHA mortgage insurance and those that are not eligible) are made available to interested law enforcement officers, teachers, and firefighters/emergency responders prior to listing the properties for sale to other purchasers.

(c) *Multiple offers.* In the event that several offers are made on a single property, HUD will randomly select a winning offer by lottery as well as a back-up offer in the event the winning offeror is unable to close on purchase of the property. If the back-up offeror is also unable to close on the purchase of the property, the property will then be made available for sale to other purchasers.

(d) *Real estate brokers.* Law enforcement officers, teachers, and firefighters/emergency responders must submit offers through a participating real estate broker. Any real estate broker who has agreed to comply with HUD requirements may participate in the GNND Sales Program. Real estate brokers may submit unlimited numbers of offers on an individual property provided each offer is from a different prospective purchaser.

(e) *Cap on sales.* The number of HUD-acquired homes sold under the GNND Sales Program in a fiscal year shall not exceed five percent of the number of ''Part A'' mortgage insurance conveyance claims paid by HUD in the immediately preceding fiscal year. The cap shall apply on a national basis, but HUD reserves the right to geographically apportion the cap to address regional or local differences in the number of homes sold through the GNND Sales Program. Additionally, HUD may adjust the percentage of the cap for any fiscal year. Any HUD determination to geographically distribute the cap, change a current geographic distribution, or adjust the percentage of the cap will be announced by HUD through publication of a notice in the **Federal Register** at least 30 days before the revision takes effect.

§ 291.515 Purchaser qualifications.

To qualify to purchase a home through the GNND Sales Program:

(a) The person must be employed as a full-time law enforcement officer (as described in § 291.520), teacher (as described in § 291.525), or firefighter/emergency responder (as described in § 291.530) at the time he/she submits a bid to purchase a home through the program and at the time of closing on the purchase of the home;

(b) The person must certify to his/her good faith intention to continue employment as a law enforcement officer (as described in § 291.520), teacher (as described in § 291.525), or firefighter/emergency responder (as described in § 291.530) for at least one year following the date of closing;

(c) The person must make an earnest money deposit at the time of signing the contract for purchase of the home as described in § 291.535;

(d) The person must agree to own, and live in as his/her sole residence, the home for the entire duration of the owner-occupancy term, as described in § 291.540 and to certify to that occupancy as described in § 292.565;

(e) The person must agree to execute a second mortgage and note on the home as described in § 291.550 for the difference between the initial list price and the discounted selling price;

(f) Neither the person (nor his/her spouse) may have owned any residential real property for one year prior to the date of submitting a bid on the home

being acquired through the GNND Sales Program;

(g) Neither the person (nor his/her spouse) must ever have purchased another home under the GNND Sales Program or under the predecessor Officer Next Door Sales and Teacher Next Door Sales programs; and

(h) Although both spouses, if otherwise eligible, may submit an offer on a single home made available for sale under the GNND Sales Program, HUD will only approve an offer from only one spouse.

§ 291.520 Eligible law enforcement officers.

A person qualifies as a law enforcement officer, for the purposes of the GNND Sales Program if the person is:

(a) Employed full-time by a law enforcement agency of the federal government, a state, unit of general local government, or an Indian tribal government; and

(b) In carrying out such full-time employment, the person is sworn to uphold and make arrests for violations of federal, state, tribal, county, township, or municipal laws.

§ 291.525 Eligible teachers.

A person qualifies as a teacher for the purposes of the GNND Sales Program, if the person is:

(a) Employed full-time by a state accredited public school or private school that provides direct services to students in grades pre-kindergarten through 12; and

(b) The public or private school where the person is employed serves students from the area where the home is located in the normal course of business.

§ 291.530 Eligible firefighter/emergency responders.

A person qualifies as a firefighter/emergency responder, for the purposes of the GNND Sales Program, if the person is employed full-time as a firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the federal government, a state, unit of general local government, or an Indian tribal government serving the area where the home is located.

§ 291.535 Earnest money deposit.

(a) *General.* The earnest money deposit is the sum of money that must be paid by the law enforcement officer, teacher, or firefighter/emergency responder at the time of submitting an offer for purchase of a property under the GNND Sales Program. Each bid must be accompanied by an earnest money deposit in either the form of a cash equivalent as prescribed by HUD, or a certification from the real estate broker that the earnest money deposit has been deposited in the broker's escrow account.

(b) *Amount of earnest money deposit.* The amount of the earnest money deposit required is an amount equal to one percent of the list price, but no less than $500 and no more than $2,000.

(c) *Acceptance or rejection of offer.* If an offer is accepted, the earnest money deposit will be credited to the purchaser at closing. If the offer is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total forfeiture for failure of the participant to close a sale.

§ 291.540 Owner-occupancy term.

(a) *General.* The owner-occupancy term is the number of months a participant in the GNND Sales Program must agree to own, and live in as his/her sole residence, a home purchased through the GNND Sales Program.

(b) *Start of owner-occupancy term.* The owner-occupancy term is 36 months, commencing either

(1) Thirty (30) days following closing, if HUD determines that the home requires no more than $10,000 in repairs prior to occupancy;

(2) Ninety (90) days following closing, if HUD determines that the home requires more than $10,000, but not more than $20,000 in repairs prior to occupancy; or

(3) One hundred and eighty (180) days following closing if HUD determines that the home requires more than $20,000 in repairs prior to occupancy.

(c) *Interruptions to owner-occupancy term.* (1) *General.* HUD may, at its sole discretion, allow interruptions to the 36-month owner-occupancy term if it determines that the interruption is necessary to prevent hardship, but only if the law enforcement officer, teacher, or firefighter/emergency responder submits a written and signed request to HUD containing the following information:

(i) The reasons why the interruption is necessary;

(ii) The dates of the intended interruption; and

(iii) A certification from the law enforcement officer, teacher, or firefighter/emergency responder that:

(A) The law enforcement officer, teacher, or firefighter/emergency responder is not abandoning the home as his/her permanent residence; and

(B) The law enforcement officer, teacher, or firefighter/emergency responder will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

(2) *Timing of written request to HUD.* The written request for approval of an interruption to the owner-occupancy term must be submitted to HUD at least 30 calendar days before the anticipated interruption. Military service members protected by the Servicemembers Civil Relief Act of 2003 need not submit their written request to HUD 30 days in advance of an anticipated interruption, but should submit their written request as soon as practicable upon learning of a potential interruption, in order to ensure timely processing and approval of the request.

§ 291.545 Financing purchase of the home.

(a) *Purchase using conventional financing.* If the law enforcement officer, teacher, or firefighter/emergency responder uses conventional financing to purchase a home under the GNND Sales Program, the amount of the mortgage may not exceed the discounted sales price of the home.

(b) *Purchase with FHA-insured mortgage.* A law enforcement officer, teacher, or firefighter/emergency responder using an FHA-insured mortgage to finance purchase of the home may finance reasonable and customary closing costs with the FHA-insured mortgage. The amount of the FHA-insured mortgage may not exceed the discounted sales price of the home plus the closing costs.

(c) *No HUD payment of closing costs.* In no event will HUD pay a buyer's closing costs on the purchase of a property through the GNND Sales Program.

§ 291.550 Second mortgage.

(a) *General.* The second mortgage is a mortgage and note, payable to HUD, on the home purchased through the GNND Sales Program in the amount of the difference between the list price of the home and the discounted selling price.

(b) *Second mortgage term.* The term of the second mortgage is equal to the owner-occupancy term (36 months) plus 30, 90, or 180 days, as applicable depending on the amount of repairs required prior to occupancy (see § 291.540(b)). The amount of the second mortgage will be reduced by 1/36th on the last day of each month of occupancy following the occupancy start date. At the end of the 36th month of occupancy, the amount of the second mortgage will be zero.

(c) *Sale or vacancy of home.* If the law enforcement officer, teacher, or firefighter/emergency responder sells his/her home or stops living in the

home as his/her sole residence prior to the expiration of the owner-occupancy term, he/she will owe HUD the amount due on the second mortgage either as of the date the property is sold or vacated.

§ 291.555 Refinancing.

(a) *General.* A law enforcement officer, teacher, or firefighter/emergency responder may refinance the mortgage and note used to purchase the home. However, the total of the refinanced mortgage and the remaining principal balance of the second mortgage may not exceed 95 percent of the value of the property, as appraised at the time of the refinancing. Unless HUD permits subordination pursuant to paragraph (b) of this section, the second mortgage described in § 291.550 must hold a superior lien position to the refinanced mortgage.

(b) *Subordination of second mortgage.* HUD may permit subordination of the second mortgage to the refinanced mortgage, but only if HUD, at its sole discretion, determines that the refinancing will satisfy one of the following:

(1) Will result in a lower annual percentage rate (APR) on the first mortgage;

(2) Will be undertaken pursuant to HUD's Section 203(k) Rehabilitation Loan Insurance Program in order to rehabilitate or repair the home; or

(3) Is necessary to prevent the law enforcement officer, teacher, or firefighter/emergency responder from defaulting on the first mortgage.

§ 291.560 Ineligibility of multiple-unit properties.

Only single-unit properties are eligible for the GNND Sales Program.

§ 291.565 Continuing obligations after purchase.

To remain a participant in the GNND Sales Program, the law enforcement officer, teacher, or firefighter/emergency responder, must, for the entire duration of the owner-occupancy term:

(a) Continue to own, and live in as his/her sole residence, the home purchased through the GNND Sales Program; and

(b) Certify initially and once annually thereafter during and at the conclusion of the owner-occupancy term that paragraph (a) of this section continues to be true.

Dated: July 8, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 05–17642 Filed 9–7–05; 8:45 am]

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Federal Register

Thursday,
September 8, 2005

Part IV

Department of Housing and Urban Development

Eligibility of Firefighters and Emergency Medical Technicians To Participate in the Officer Next Door Sales Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4712–N–02]

Eligibility of Firefighters and Emergency Medical Technicians To Participate in the Officer Next Door Sales Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces the eligibility of firefighters and emergency medical technicians to purchase HUD-acquired homes located in HUD-designated revitalization areas at a discount, in accordance with HUD's regulations for the Officer Next Door (OND) Sales Program. Inclusion in the OND Sales Program is designed to help more firefighters and emergency responders become homeowners, and will further the goals of the OND Sales Program to accelerate the revitalization of America's cities by promoting the integration of dedicated role models and mentors into the community. Elsewhere in today's **Federal Register**, HUD has published a proposed rule that would establish the Good Neighbor Next Door (GNND) Sales Program. The GNND Sales Program would build upon and replace the existing OND Sales Program and Teacher Next Door Sales Program, combining them into one broader program. The proposed rule, when made final, will codify the eligibility of law enforcement officers, teachers, firefighters and emergency medical technicians to participate in the new Good Neighbor Next Door Sales Program.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Officer Next Door (OND) Sales Program enables eligible law enforcement officers to assist in the revitalization of economically distressed neighborhoods. Under the OND Sales Program, full-time law enforcement officers may purchase HUD-acquired homes located in HUD-designated revitalization areas at a 50 percent discount from list prices. The home must be the law enforcement officer's sole residence during a prescribed owner-occupancy term. HUD's regulations for the OND Sales Program are located in subpart F of 24 CFR part 291 (entitled ''Disposition of HUD-Acquired Single Family Properties''). The success of the OND Sales Program led to the development of the Teacher Next Door (TND) Sales Program, which enables teachers to purchase HUD-acquired homes located in revitalization areas at a discount from list prices. HUD announced the creation of the TND Sales Program through a **Federal Register** notice published on December 7, 1999 (64 FR 68370).

II. This Notice

This notice builds upon the success of both the OND and TND Sales Programs by expanding eligibility to include firefighters and emergency medical technicians. As with law enforcement officers and teachers, the daily responsibilities of firefighters and emergency medical technicians reflect a high level of commitment to public service and represent a nexus to the needs of the communities they serve. The expansion of eligibility will help more firefighters and emergency medical technicians become homeowners, and will further the goals of the OND and TND Sales Programs to accelerate the revitalization of America's cities by promoting the integration of dedicated role models and mentors into the community.

Firefighters and emergency medical technicians will be able to participate under, and subject to, the regulations for the OND Sales Program codified at 24 CFR part 291, subpart F. To qualify as an eligible firefighter or emergency medical technician, an individual must be employed as a full-time firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the federal government, a state, a unit of general local government, or an Indian tribal government serving the area where the home is located. The employment requirement must be satisfied both at the time the firefighter or emergency medical technician submits a bid to purchase the home, and at the time of closing on the purchase of the home.

Elsewhere in today's **Federal Register**, HUD has published a proposed rule for public comment that would establish regulations for a new Good Neighbor Next Door (GNND) Sales Program. The GNND Sales Program would replace and build upon the success of the OND and TND Sales Programs, and include as eligible participants, law enforcement officers, teachers, firefighters, and emergency medical technicians. Interested persons should refer to the proposed rule for additional information on the GNND Sales Program. The public comment period for the proposed rule closes on November 7, 2005. HUD will consider all public comments in the development of the final rule.

Dated: August 29, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 05–17674 Filed 9–7–05; 8:45 am]

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Thursday,
September 8, 2005

Part V

Department of Housing and Urban Development

Notice of Funding Availability for Fiscal Year (FY) 2005 Self-Help Homeownership Opportunity Program (SHOP); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4951–N–01]

Notice of Funding Availability for Fiscal Year (FY) 2005 Self-Help Homeownership Opportunity Program (SHOP)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Community Planning and Development.

B. *Funding Opportunity Title:* Self-Help Homeownership Opportunity Program (SHOP).

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* The **Federal Register** number for this NOFA is FR–4951–N–01. The Office of Management and Budget (OMB) paperwork approval number is 2506–0157.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* Self-Help Homeownership Opportunity Program. The CFDA number is 14.247.

F. *Application Deadline:* The application submission date is November 7, 2005. Applications may be submitted electronically or in paper version. Applications submitted electronically through *www.Grants.gov* must be received by grants.gov no later than 11:59:59 p.m. eastern time on the application submission date. Applicants submitting paper applications must send their applications via the United States Postal Service (USPS) no later than 11:59:59 p.m. eastern time on the application submission date. Please see the General Section of the SuperNOFA (70 FR 13575) published March 21, 2005, for further information about application submission, delivery, and timely receipt requirements.

G. *Optional, Additional Overview Content Information:* SHOP funds are awarded to national and regional nonprofit organizations and consortia demonstrating experience in administering self-help housing programs in which the homebuyers contribute a significant amount of sweat-equity toward construction or rehabilitation of the dwelling.

The amount available for SHOP in Fiscal Year (FY) 2005 is approximately $24,800,000 to be awarded to eligible applicants.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

SHOP funds are intended to facilitate and encourage innovative homeownership opportunities on a national geographically diverse basis through self-help housing programs that require a significant amount of sweat-equity by the homebuyer toward the construction or rehabilitation of the dwelling.

SHOP programs are administered by national and regional nonprofit organizations and consortia. Units developed with SHOP funds must be decent, safe, and sanitary non-luxury dwellings and must be made available to eligible homebuyers at prices below the prevailing market prices. Eligible homebuyers are low-income individuals and families (*i.e.*, those whose annual incomes do not exceed 80 percent of the median income for the area, as established by HUD) who would otherwise be unable to purchase a dwelling but for the provision of sweat equity. Housing assisted under this NOFA must involve labor contributed by homebuyers and volunteers in the construction of dwellings and by other activities that involve the community in the project.

B. Authority

The funding made available under this program is authorized by Section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) (the ''Extension Act'').

II. Award Information

Approximately $24,800,000 will be available for this program in FY 2005. Any unobligated funds from previous competitions or additional funds that may become available due to deobligation or recapture from previous awards or budget transfers may be added to the FY 2005 appropriation to fund applications submitted in response to this NOFA. Awards will be made to successful applicants in the form of a grant. The period for drawing funds is up to 36 months from the date HUD establishes a line of credit for successful applicants.

III. Eligibility Information

A. Eligible Applicants

You must be a national or regional nonprofit public or private organization or consortium that has the capacity and experience to provide or facilitate self-help housing homeownership opportunities. Your organization or consortium must undertake eligible SHOP activities directly and/or provide funding assistance to your local affiliates to carry out SHOP activities.

A national organization is defined as an organization that carries out self-help housing activities or funds affiliates that carry out self-help housing activities on a national scope. A national organization must propose in its application to use a significant amount of SHOP funds in at least two states.

A regional organization is defined as an organization that carries out self-help housing activities or funds affiliates that carry out self-help housing activities on a regional scope. A regional area is a geographic area, such as the Southwest or Northeast, that includes at least two states. The regional organization must propose to use a significant amount of SHOP funds in at least two states. The states in the region need not be contiguous, and the service area of the organization need not precisely conform to state boundaries. Affiliates working under regional organizations must be located within the regional organization's service area.

A consortium is defined as two or more nonprofit organizations located in at least two states that individually have the capacity and experience to carry out self-help housing activities or fund affiliates that carry out self-help housing activities on a national or regional scope and enter into an agreement to submit a single application for SHOP funding on a national or regional basis. The consortium must propose to use a significant amount of SHOP funds in each state represented in the consortium. One organization must be designated as the lead entity. The lead entity must submit the application and, if selected for funding, execute the SHOP Grant Agreement with HUD and assume responsibility for the grant on behalf of the consortium in compliance with all program requirements.

A consortium agreement, executed and dated by *all* consortium members for the purpose of applying for and using FY 2005 SHOP funds, must be submitted with your application. All consortium members must be identified in your application. A consortium's application must be *a single integrated document that demonstrates the consortium's comprehensive approach to self-help housing.* If individual consortium members use different program designs, your application must briefly describe in factor 3 the program design of each consortium member. Upon being funded, the lead entity must enter into a separate agreement with each consortium member. The agreement must incorporate the requirements of the FY 2005 SHOP

Grant Agreement between HUD and the consortium and outline the individual consortium member's responsibilities for compliance with HUD's 2005 SHOP program.

An affiliate is defined as:

(1) a local public or private nonprofit self-help housing organization which is a subordinate organization (*i.e.*, chapter, local, post, or unit) of a central organization and covered by the group exemption letter issued to the central organization under Section 501(c)(3) of the Internal Revenue Code;

(2) a local public or private nonprofit self-help housing organization with which the applicant has an existing relationship (*e.g.*, the applicant has provided technical assistance or funding to the local self-help housing organization); or

(3) a local public or private nonprofit self-help housing organization with which the applicant does not have an existing relationship, but to which the applicant will provide necessary technical assistance and mentoring as part of funding under the application.

You must carry out eligible activities or you must enter into an agreement to fund affiliates to carry out eligible activities. If you are a consortium, each of your affiliates must be linked to an individual consortium member.

Your application may not propose to fund any affiliate or consortium member that is also included in another SHOP application. You must ensure that any affiliate or consortium member under your FY 2005 application is not also seeking FY 2005 SHOP funding from another SHOP applicant. If an affiliate applies for funds through more than one applicant, it may be disqualified for any funding.

B. Cost Sharing or Matching

There is no match requirement for the SHOP funds. However, you are expected to leverage resources for the construction of self-help housing assisted with SHOP. Failure to provide documentation of leveraged resources that meet the submission requirements for firm commitments as stated in factor 4 will result in a lower application score.

C. Other

1. Eligible Activities

Eligible activities are:

a. *Land acquisition* (including financing and closing costs), which may include reimbursing an organization, consortium, or affiliate, upon approval of any required environmental review, for non-grant amounts expended by the organization, consortium, or affiliate to acquire land before completion of the review;

b. *Infrastructure improvements* (installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure, including removal of environmental hazards); and

c. *Administration, planning, and management development,* including the costs of general management, oversight, and coordination of the SHOP grant, staff and overhead costs of the SHOP grant, costs of providing information to the public about the SHOP grant, costs of providing civil rights training to local affiliates as well as any expenses involved in affirmatively furthering fair housing, and indirect costs (such as rent and utilities) of the grantee or affiliate in carrying out the SHOP activities.

2. Threshold Requirements

HUD will not consider an application from an ineligible applicant. An applicant must meet all of the applicable threshold requirements of Section III.C of the General Section of the SuperNOFA (70 FR 13575). Each applicant must meet and comply with the SHOP threshold requirements described below:

a. *Organization and Eligibility.* You must be eligible to apply under SHOP (see Section III.A. of this program section).

b. *Non-Profit Status.* You must describe how you qualify as an eligible applicant and provide evidence of your public or private nonprofit status, such as a current Internal Revenue Service (IRS) ruling that your organization is exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986. If you are a consortium, each participant in your consortium must be a nonprofit organization. Each consortium member must submit evidence of its nonprofit status to the lead entity for inclusion in the consortium's application package.

c. *Consortium Agreement.* If you are a consortium, each consortium member must enter into and sign a consortium agreement for the purpose of applying for and carrying out SHOP activities. Your consortium agreement must be submitted as an appendix to your application.

d. *Amount.* The amount of SHOP funds you request must be sufficient to complete a minimum of 30 self-help housing units and may not exceed an average investment of $15,000 per unit.

e. *Homebuyer Eligibility.* The population you propose to serve must be eligible for SHOP assistance. Eligible homebuyers are low-income individuals and families (*i.e.*, those whose incomes do not exceed 80 percent of the median income for the area, as established by HUD). You must specify the definition of ''annual income'' to be used in your proposed program. You may use one of the following three definitions of ''annual income'' to determine whether a homebuyer is income eligible under SHOP:

(1) ''Annual income'' as defined at 24 CFR 5.609; or

(2) ''Annual income'' as reported under the Census long-form for the most recent available decennial Census; or

(3) ''Adjusted gross income'' as defined for purposes of reporting under the IRS Form 1040 series for individual federal annual income tax purposes.

You may also adopt or develop your own definition of annual income for use in determining income eligibility under SHOP subject to review and approval by HUD.

f. *Experience.* You must demonstrate that you have successfully completed at least 30 self-help homeownership units in a national or regional area within the 24-month period immediately preceding the publication of this NOFA. To qualify as self-help homeownership units, the homebuyers must have contributed a significant amount of sweat-equity toward the construction of the dwellings as set forth in Section III.C.2(g) below.

g. *Sweat Equity.* Your program must require homebuyers to contribute a minimum of 100 hours of sweat equity toward the construction or rehabilitation of their own homes and/or the homes of other homebuyers participating in the self-help housing program. However, in the case of a household with only one adult, the requirement is 50 hours of sweat equity toward the construction of these homes. This includes training for construction on the dwelling units, but excludes homebuyer counseling and home maintenance training. All homebuyers must meet these minimum hourly sweat equity requirements; however, grantees must permit reasonable accommodations for persons with disabilities in order for them to meet the hourly requirements. For example, homebuyers with disabilities may work on less physical tasks or administrative tasks to meet this requirement or a volunteer(s) may enter into an agreement to substitute for the disabled person.

h. *Community Participation.* Your program must involve community participation in which volunteers assist in the construction of dwellings. Volunteer labor is work performed by an individual without promise, expectation, or compensation for the

work rendered. For mutual self-help housing programs that are assisted by the U.S. Department of Agriculture's Rural Housing Services/Rural Development under Section 523 of the Housing Act of 1949 (7 CFR Part 1944, subpart I) or which have a program design similar to the Section 523 program, the work by each participating family on other participating families' homes may count as volunteer labor. A mutual self-help housing program generally involves 4 to 10 participating families organized in a group to use their own labor to reduce the total construction cost of their homes and complete construction work on their homes by an exchange of labor with one another.

i. *Eligible Activities.* You must propose to use the SHOP funds for eligible activities (see Sections III.C.1 and IV.D.). You must carry out the activities or you must fund affiliates to carry out the activities.

3. Threshold Submission Requirements

In order for your application to be rated and ranked, all threshold requirements must be met. Threshold requirements 2 (d) through (i) above do not require separate submissions. These requirements must be addressed under the submission requirements for the rating factors listed below in Section V, Application Review Information Criteria, of this SHOP NOFA.

4. Other Requirements

a. Affirmatively Furthering Fair Housing. SHOP recipients must affirmatively further fair housing.

b. Economic Opportunities for Low- and Very Low-Income Persons (Section 3). SHOP recipients must comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 170lu (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135, including the reporting requirement of subpart E. Section 3 requires recipients to ensure that to the greatest extent feasible, training, employment, and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and business concerns that provide economic opportunities to low- and very-low income persons.

c. Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses. SHOP recipients (grantees and affiliates) must comply with 24 CFR 84.44(b) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used whenever possible.

d. Executive Order 13166, ''Improving Access to Services for Persons With Limited English Proficiency (LEP).'' See the General Section for requirements for providing access to services under this Executive Order.

e. Executive Order 13279, ''Equal Protection of the Laws for Faith-Based and Community Organizations.'' See the General Section.

f. Participation in HUD-Sponsored Program Evaluation. See the General Section.

g. Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.'' See the General Section.

h. Salary Limitation for Consultants. See the General Section.

i. Real Property Acquisition and Relocation. SHOP projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the government-wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR part 24.

The Uniform Act is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The Uniform Act was enacted by Congress to ensure that people whose real property is acquired, or who move as a direct result of projects receiving federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

SHOP grantees and affiliates must comply with all applicable Uniform Act requirements in order to receive SHOP funds for their programs and projects; non-compliance could jeopardize SHOP funding. Real property acquisitions for a SHOP-assisted program or project conducted prior to completion of an environmental review and HUD's approval of a request for release of funds and environmental certification are also subject to the Uniform Act. SHOP grantees and affiliates must ensure that all such real property acquisitions comply with applicable Uniform Act requirements.

Generally, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as ''voluntary acquisitions,'' must satisfy the applicable requirements and criteria of 49 CFR 24.101(b)(1) through (5). Evidence of compliance with these requirements must be submitted to and be maintained by the SHOP grantee. It is also important to note that tenants who occupy property which may be acquired through voluntary means must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants of their potential eligibility when negotiations are initiated, notifying them if they become fully eligible, and, in the event the purchase of the property will not occur, notifying them that they are no longer eligible for relocation benefits. Evidence of compliance with these requirements must be submitted to and be maintained by the SHOP grantee.

Additional information and resources pertaining to real property acquisition and relocation for HUD-funded programs and projects are available on HUD's Real Estate Acquisition and Relocation Web site at *http://www.hud.gov/relocation*. You will find applicable laws and regulations, policy and guidance, publications, training resources, and a listing of HUD contacts if you have questions or need assistance.

j. Environmental Requirements. The environmental review requirements for SHOP supersede the environmental requirements in the General Section. The provisions contained in section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, implemented in the Environmental Review regulations at 24 CFR part 58, are applicable to properties assisted with SHOP funds. All SHOP assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities. SHOP grant applicants are cautioned that no activity or project may be undertaken, or federal or non-federal funds or assistance committed, if the project or activity would limit reasonable choices or could produce an adverse environmental impact until all required environmental reviews and notifications have been completed by a unit of general local government, tribe, or state and until HUD approves a recipient's request for release of funds under the environmental provisions contained in 24 CFR part 58. Notwithstanding the preceding sentence, in accordance with section 11(d)(2)(A) of the Housing Opportunity Extension Act of l996 and HUD Notice

CPD–01–09, an organization, consortium, or affiliate receiving SHOP assistance may advance non-grant funds to acquire land prior to completion of an environmental review and HUD's approval of a request for release of funds and environmental certification. Any advances to acquire land prior to such approval are made at the risk of the organization, consortium, or affiliate, and reimbursement from SHOP funds for such advances will depend on the result of the environmental review.

k. Statutory and Program Requirements. SHOP is governed by Section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) (the Extension Act), and this NOFA. There are no program regulations. You must comply with all statutory requirements applicable to SHOP as cited in Section I, Funding Opportunity Description, of this SHOP NOFA and the program requirements cited in this SHOP NOFA. Pursuant to these requirements, you must:

(1) Develop, through significant amounts of sweat-equity by each homebuyer and volunteer labor, at least 30 dwelling units at an average cost of no more than $15,000 per unit of SHOP funds for land acquisition and infrastructure improvements;

(2) Use your grant to leverage other sources of funding, including private or other public funds, to complete construction of the housing units;

(3) Develop quality dwellings that comply with local building and safety codes and standards, that will be made available to homebuyers at prices below the prevailing market price;

(4) Schedule SHOP activities to expend all grant funds awarded and substantially fulfill your obligations under your grant agreement, including timely development of the appropriate number of dwelling units. Grant funds must be expended within 24 months of the date that they are first made available for draw-down in a line of credit established by HUD for the Grantee, except that grant funds provided to affiliates that develop five or more units must be expended within 36 months; and

(5) Not require a homebuyer to make an up-front financial contribution to a housing unit other than cash contributed for down payment or closing costs at the time of acquisition.

IV. Application and Submission Information

A. Address To Request Application Package

This notice contains all the information necessary for national and regional nonprofit organizations and consortia to submit an application for SHOP funding. This section describes how you may obtain application forms, additional information about the SHOP program NOFA, and technical assistance. Copies of the published SHOP NOFA and related application forms for this NOFA may be downloaded from the grants.gov Web site at *www.grants.gov/FIND*. You may choose from links provided under the topic ''Search Grant Opportunities,'' which allows you to do a basic search or to browse by category or agency. If you have difficulty accessing the information, you may receive customer support from Grants.gov by calling its help line at (800) 518–GRANTS or sending an e-mail to *support@grants.gov*. The operators will assist you in accessing the information. If you do not have Internet access and you need to obtain a copy of this NOFA, you may contact HUD's NOFA Information Center toll-free at (800) HUD–2209.

1. *Application Kit.* There is no application kit for this program. All the information you need to apply is contained in this NOFA and available at *www.grants.gov/Apply*. HUD has made an effort to improve the readability of this NOFA and publish all required forms for application submission in the **Federal Register**. The NOFA forms are available to be downloaded from *www.grants.gov/Apply* by clicking on Apply Step 1. Please pay attention to the submission requirements and format for submission specified for this SHOP NOFA to ensure that you have submitted all required elements of your application.

The published **Federal Register** document is the official document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *www.grants.gov*, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** for this program NOFA.

2. *Guidebook and Further Information.* A guidebook to HUD programs entitled, ''Connecting with Communities: A User's Guide to HUD Programs and the FY 2005 NOFA Process,'' is available for the HUD NOFA Information Center and the HUD Web site at *www.hud.gov/offices/adm/grants/fundsavail.cfm*. The guidebook provides a brief description of all HUD programs, identifies eligible applicants for the programs, and provides examples of how programs can work in combination to serve local community needs. You can also get a copy from the NOFA Information Center at (800) HUD–8929 or, for the hearing impaired, (800 HUD–2209 (TTY) (these are toll-free numbers). The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except on Federal holidays.

B. Content and Form of Application Submission

You must meet all application and submission requirements described in Section IV.B of the General Section (70 FR 13581). Your application should consist of the items listed in the section below called Assembly Format and Content. HUD's standard forms can be found in Appendix B of the General Section (70 FR 13599).

1. *Page Limits.* There are page limits for responses to the five rating factors. A national or regional organization is limited to 60 pages of narrative to respond to the five rating factors. A consortium is permitted up to 10 additional pages total to accommodate the requirement to address the capacity and soundness of approach of its individual consortium members if they are different from that of the lead agency. Required appendices, forms, certifications, statements, and assurances are not subject to the page limitations. All pages must be numbered sequentially from 1 through 60 or 70, for factors 1 through 5. For paper submissions, tabs must be inserted to separate each factor. Your application may contain only the narrative statements that address the five rating factors and the required forms, certifications, assurances, and appendices listed in Assembly Format and Content below to be submitted for review. In responding to the five factors, information must be included in your narrative response to each factor, unless this NOFA states that it should be included as an appendix. If you are submitting material using the fax method described in the General Section (70 FR 13583), the narrative should refer to the documents being faxed as part of your narrative response to the factor. Any supplemental information not required in the narratives or appendices requested by HUD that further explains information required in the five factors will not be reviewed for consideration in the scoring of the application. Applicants are discouraged from submitting unnecessary documentation.

2. *Assembly Format and Content.* Your FY 2005 application will be comprised of an Application Overview, Narrative Statements (rating factors), Forms, and Appendices. In order to receive full consideration for funding, you should use the following checklist to ensure that all requirements are addressed and submitted with your electronic application. For applicants that submit a paper application, the application must be assembled according to the following checklist to ensure that all of the required items are submitted.

a. Application Overview (Not subject to the page limitations)

__SF–424, Application for Federal Assistance (signed by the Authorized Organization Representative (AOR) of the organization eligible to receive funds).
__SF–424 Supplement, Survey on Ensuring Equal Opportunity for Applicants.
__Self-Help Housing Organization Qualification—Narrative describing qualification as an eligible applicant and Evidence of Nonprofit Tax Exempt Status (in accordance with section III.C.2. of this NOFA).
__Consortium Agreement, if applicable.
__Program Summary.

b. Narrative Statements Addressing: (Subject to the page limitations described above.)

__Factor 1—Capacity of the Applicant and Relevant Organizational Staff.
__Factor 2—Need/Extent of the Problem.
__Factor 3—Soundness of Approach.
__Factor 4—Leveraging Resources.
__Factor 5—Achieving Results and Program Evaluation.

c. Forms, Certifications, and Assurances: (Not subject to the page limitations.)

__HUD–424CB, Grant Application Detailed Budget.
__HUD–424–CBW, Grant Application Detailed Budget Worksheet.
__SF–LLL, Disclosure of Lobbying Activities, as applicable.
__HUD–2880, Applicant/Recipient Disclosure/Update Report.
__HUD–2990, Certification of Consistency with the RC/EZ/EC–II Strategic Plan.
__HUD–2993, Acknowledgment of Application Receipt (paper submissions only).
__HUD–96011, Facsimile Transmittal (electronic submissions only).
__HUD–2994, Client Comments and Suggestions (optional)
__HUD–96010, Program Outcome Logic Model.

d. Appendices: (Not subject to the page limitations.)

__A copy of your code of conduct (see section III.C.3 of the General Section, 70 FR 13577).
__Leveraging documentation—firm commitment letters (see factor 4).
__Survey of potential affiliates, if applicable (see factor 2).
__Demonstration of past performance for new applicants (see factor 1).
__HUD–27300, Questionnaire for HUD's Initiative on Removal of Regulatory Barriers (see factor 3).
__Evaluative criteria for Removal of Regulatory Barriers to Affordable Housing in affiliate selection process, if applicable (see factor 3).

e. Certifications and Assurances. Applicants are placed on notice that by signing the SF–424 cover page noted above in 2.a., Application Overview, the applicant is certifying to all information described in Section IV.B.2 (''Certifications and Assurances'') in the General Section (70 FR 13581).

C. Submission Date and Time

1. The application submission date is November 7, 2005.

2. *No Facsimiles or Videos.* HUD will not accept for review, evaluation, or funding, any entire application sent by facsimile (fax). However, third-party documents or other materials sent by facsimile in compliance with the submission requirements and received by the application submission date will be accepted. Facsimile corrections to technical deficiencies will be accepted. Also, videos submitted as part of an application will not be viewed.

D. Intergovernmental Review

Executive Order 12372 review does not apply to SHOP.

E. Funding Restrictions

1. *Administrative costs.* Administrative costs may not exceed 20 percent of any SHOP grant. Indirect costs may only be charged to the SHOP grant under a cost allocation plan prepared in accordance with OMB Circular A–122.

2. *Pre-agreement costs.* After submission of the application, but before the effective date of the SHOP Grant Agreement, an applicant may incur costs that may be charged to its SHOP grant provided the costs are eligible (see Section III.C.1.) and in compliance with the requirements of this NOFA (including environmental review requirements) and the application. Applicants incur costs at their own risk, because applicants that do not receive a SHOP grant cannot be reimbursed.

3. *Ineligible Costs.* Costs associated with the rehabilitation, improvement, or construction of dwellings and any other costs not identified in Section III.C.1. are not eligible uses of program funds. Acquiring land for land banking purposes (*i.e.*, holding land for an indefinite period) is an ineligible use of SHOP funds. Acquisition undertaken by the applicant or its affiliate before the submission of the application is not an eligible cost.

F. Other Submission Requirements

1. You must meet all submission requirements described in Section IV.F of the General Section, except the requirement for waiver of electronic submissions. Please refer to Section IV.F of the General Section (70 FR 13582) for detailed submission instructions, including methods for submission and timely receipt requirements for electronic and mailed applications. Applicants should carefully review these instructions as there have been major changes implemented for all HUD's 2005 NOFAs.

2. In addition to the submission requirements described in Section IV.F.4 of the General Section, please note the following direction specific to SHOP. During FY 2005, HUD strongly encourages submission of electronic applications. Electronic applications must be submitted through the *www.Grants.gov* portal. While electronic application submission through Grants.gov is encouraged, an applicant that wishes to submit a paper application must send an original and two copies to the Department of Housing and Urban Development, Central Processing Unit, Room 7152, 451 Seventh Street, SW., Washington, DC 20410, ATTN: Self-Help Homeownership Opportunity Program (SHOP). In subsequent years of competition, electronic submissions will be expected.

V. Application Review Information

A. Criteria

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (30 Points)

This factor examines the extent to which you, as a single applicant or consortium (including individual consortium members), have the experience and organizational resources necessary to carry out the proposed activities effectively and in a timely manner. Any applicant that does not receive at least 20 points under this factor will not be eligible for funding.

In evaluating this factor, HUD will consider your recent and relevant experience in carrying out the activities you propose, and your administrative and fiscal management capability to administer the grant, including the ability to account for funds appropriately. All applicants, including individual consortium members, must have capacity and experience in administering or facilitating self-help housing. If you are sponsoring affiliate organizations that do not have experience in developing self-help housing, HUD will assess your organization's experience in providing technical assistance and the ability to mentor new affiliates. For applicants that currently have open SHOP grants, HUD will assess your organization's past performance based upon performance reports that demonstrate your organization's completion of eligible SHOP activities, the number of families provided housing, financial status information focusing on timely use of funds, and other program outcomes. HUD will consider whether you have had funds deobligated for failure to meet your drawdown and construction schedules or funds were returned because of monitoring findings or other program deficiencies. HUD will also rely on monitoring reports, audit reports, and other information available to HUD in making its determination under this factor. For applicants that currently have open SHOP grants from previous years, HUD will assess your pattern of meeting benchmarks in the most recent three years of participation in the program. If you are not a current recipient of SHOP funds, you must summarize your past performance in undertaking similar or the same activities during the past three years. You may supplement your narrative with existing internal or external performance reports or other information that will assist HUD in making this determination and submit it as an appendix. Supplemental information and reports from applicants that have not received previous SHOP funding do not count against the page limitations. Failure to provide this information will result in a lower score.

Submission Requirements for Rating Factor 1

a. *Past Experience (12 points).* You must describe your past experience in carrying out self-help housing activities (specify the time frame during which these activities occurred) that are the same as, or similar to, the activities you propose for funding, and demonstrate that you have had reasonable success in carrying out and completing those activities. You must include the average number of sweat equity hours provided per homebuyer family, and the average number of volunteer labor hours provided per unit. You may demonstrate reasonable success by showing that your previous activities were carried out as proposed, consistent with the time frame you proposed for completion of all work. You must provide evidence regarding your performance in meeting established benchmarks for acquiring properties and completing housing construction and indicate that performance reports were submitted as required. New applicants furnishing supplemental material should refer to the introduction to this rating factor. To the extent that you encountered delays that were beyond your control, please describe the circumstances causing the delays and the mitigating actions taken to overcome them to successfully complete your program.

b. *Management Structure (12 points).* You must provide a description of your organization's or consortium's management structure, including an organizational chart. You must also describe your key staff and their specific roles and responsibilities for day-to-day management of your proposed SHOP program. You must indicate if you will or will not be working with organizations that are inexperienced in carrying out self-help housing and describe how you will provide technical assistance and mentor these organizations to develop capacity either directly or indirectly.

c. *Experience Developing Accessible Housing (6 points).* You must demonstrate your experience in and ability to construct and alter self-help housing by describing the kinds of features that you have used to design homes in accordance with universal design and visitability standards, or otherwise make homes accessible to the elderly or persons with disabilities. You must provide data on the number of accessible units you have completed and the time frame during which units were constructed and/or altered.

Rating Factor 2: Need/Extent of the Problem (10 Points)

This factor examines the extent to which you demonstrate an urgent need for SHOP funds in your proposed target areas based on the need for affordable housing and the quality of the data submitted to substantiate that need.

The purpose of this factor is to make sure that funding is provided where a need for funding exists. Under this factor, you must identify the community need or needs that your proposed SHOP activities are designed to address. If you plan to select some or all affiliates after application submission, you must demonstrate how the selection of affiliates will help to address the needs identified in the proposed target areas.

Submission Requirements for Rating Factor 2

Extent of Need for Affordable Housing (10 points). You must establish the need for affordable housing and the specific need for SHOP funds in the communities or areas in which your proposed activities will be carried out. You must specifically address the need for acquisition and/or infrastructure assistance for self-help housing activities in these identified areas and how your proposed SHOP activities meet these needs. Also, to the extent information is available, you must address the need for accessible homes in the target area(s); evidence of housing discrimination in the target area(s); and any need for housing shown in the local Analysis of Impediments to Fair Housing Choice, if appropriate. Applicants that select affiliates after application submission must submit a list of affiliates they surveyed and upon which they are basing their need for SHOP funding, as well as the specific criteria to be used to select communities or projects based on need.

In reviewing applications, HUD will consider the extent, quality, and validity of the information and data submitted that addresses the need for affordable housing in the target area. Such information must include:

a. *Housing market data* in the proposed target areas including, but not limited to: Low-income, minority, and disability populations; number of home sales and median sales price; and homeownership, rental, and vacancy rates. This information can be obtained from state or regional housing plans, the American Housing Survey, the United States Census, Home Mortgage Disclosure Act data or other local data sources, such as Consolidated Plans, comprehensive plans, local tax assessor databases, or relevant realtor information. Data included in your application must be recent and specific to your proposed target areas; and

b. *Housing problems in the proposed target areas* such as overcrowding, cost burden, housing age or deterioration, low homeownership rate (especially among minority families, families with children, and families with members with disabilities), and lack of adequate infrastructure or utilities.

Rating Factor 3: Soundness of Approach (40 Points)

This factor examines the quality and soundness of your plan to carry out a self-help housing program. In evaluating this factor HUD will consider the areas described below:

a. Your proposed use of SHOP funds, including the number of units and the type(s) of housing to be constructed, and the use of sweat equity and volunteer labor; your schedule for expending funds and completing construction, including interim milestones; the proposed budget and cost effectiveness of your program; and your plan to reach all potentially eligible homebuyers, including those with disabilities and others least likely to apply; and your criteria for selecting homebuyers.

b. How your planned activities further the five HUD policy priorities that apply specifically to SHOP in FY 2005 as described in the General Section (70 FR 13586). The policy priorities for SHOP are:

(1) Providing increased homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families with limited English proficiency;

(2) Encouraging accessible design features: visitability in new construction and substantial rehabilitation and universal design;

(3) Providing full and equal access to grassroots, faith-based, and other community-based organizations in HUD program implementation;

(4) Participation in Energy Star; and

(5) Removal of regulatory barriers to affordable housing.

Submission Requirements for Rating Factor 3

Activities. Describe the types of activities that you propose to fund with SHOP and the proposed number of units to be assisted with SHOP funding, the housing type(s) (single family or multifamily, or both) to be assisted and the form of ownership (fee simple, condominium, cooperative, etc.) you propose to use.

a. *Sweat Equity and Volunteer Labor (6 points).* Describe your program's requirements for sweat equity and volunteer labor (*i.e.*, types of tasks and numbers of hours required for both sweat equity and volunteer labor) and how you will provide reasonable accommodations for persons with disabilities by identifying sweat equity assignments that can be performed by the homebuyer regardless of the disability, such as doing administrative, clerical, organizational, or other office work or minor tasks on site. Reasonable accommodation can include sweat equity by the homebuyer that can be performed regardless of the disability or substitution of a non-homebuyer designee(s) to perform the sweat equity assignments on behalf of the homebuyer. Volunteers who substitute for disabled homebuyers must enter into an agreement to complete the work on behalf of the homebuyers. Include the dollar value of both the sweat equity and volunteer labor contributions and specify the amount by which these contributions will reduce the sales price to the homebuyer. Applicants showing a larger reduction of the sales price as a result of the homebuyer's sweat equity and volunteer labor contributions will receive a higher score.

b. *Funds Expenditure, Construction, and Completion Schedules (5 points).* Submit a construction and completion schedule that expends SHOP funds and substantially fulfills your obligations if you are funded. You must provide a definition of ''substantially fulfills'' by specifically stating the percentage or number of properties that you propose to be completed and conveyed to homebuyers at the time all grant funds are expended. Your construction schedule must include the number of dwelling units to be completed within 24 months or, in the case of affiliates that develop five or more units, within 36 months, and a time frame for completing any unfinished units.

Your schedule must also include milestones or benchmarks against which HUD can measure your progress in selecting local affiliates if they are not specifically identified in the application, expending funds, and completing acquisition, infrastructure, and housing construction activities within these schedules. These milestones or benchmarks should be established at reasonable intervals (*e.g.*, monthly, quarterly).

c. *Budget (6 points).* Provide a detailed budget including a breakdown for each proposed task and each budget category (acquisition, infrastructure improvements, and administration) funded by SHOP in the HUD–424–CB and 424–CBW. If SHOP funds will be used for administration of your grant, you must include the cost of monitoring consortium members and affiliates at least once during the grant period. Your detailed budget must also include leveraged funding to cover costs of completing construction of the proposed number of units. Budget amounts on the HUD–424–CB and 424–CBW must agree with amounts stated elsewhere in the application.

d. *Cost Effective (3 points).* Describe how the cost of your proposed SHOP units compares to similar units in the target area(s) that are not funded with SHOP. You must demonstrate that your SHOP costs will not exceed an average of $15,000 per unit, and that your proposed self-help housing activities are cost-effective. Applicants must address costs of land, infrastructure, and housing construction for non-SHOP units.

e. *Policy Priorities (6 points).* Describe how each of the five HUD policy priorities identified specifically for SHOP is furthered by your proposed activities. You will receive up to one point for each policy priority (1), (2), (3), and (4) based on how well your proposed work activities address the specific policy, and up to two points for how you address policy priority (5), removal of regulatory barriers to affordable housing, for which you must submit form HUD–27300, Questionnaire for HUD's Initiative on Removal of Regulatory Barriers, except as provided below. Applicants that identify affiliate organizations and jurisdictions to be served in their application to HUD should address the questions in Part A or Part B of form HUD–27300 for the jurisdiction in which the majority or plurality of services will be performed. Applicants that do not identify affiliates and communities to be served in their application to HUD, but select affiliates competitively or through another method after application submission to HUD, may address this policy priority by including it as an evaluative criterion in their affiliate selection process. Such applicants may receive up to two points by requiring affiliate applicants for the awarded SHOP funds to complete the questions in either Part A or B, as appropriate. In order to receive points, applicants that identify affiliates after application submission must include their evaluative criterion as an appendix, and, if awarded SHOP funds in FY 2004, must demonstrate how the evaluative criteria that were included in your FY 2004 application were implemented. You must also describe how the evaluative criteria affected the selection and funding of affiliates, to the extent this has been completed. The narrative for your evaluative criteria does not count against the page limits described in Section IV.B.1, Page Limits.

Applicants applying for funds for projects located in local jurisdictions and counties/parishes are invited to answer 20 questions under Part A. An applicant that scores at least five in column 2 will receive 1 point in the NOFA evaluation. An applicant that scores 10 or more in column 2 will

receive 2 points in the NOFA evaluation. The community(ies) must be identified on the form HUD–27300.

Applicants applying for funds for projects located in unincorporated areas or areas otherwise not covered in Part A are invited to answer the 15 questions in Part B. Under Part B, an applicant that scores at least four points in Column 2 will receive one point in the NOFA evaluation. Under Part B, an applicant that scores eight points or greater will receive a total of two points in the evaluation. The community(ies) must be identified on the form HUD–27300.

A limited number of questions on form HUD–27300 expressly request the applicant to provide brief documentation with its response. Other questions require that, for each affirmative statement made, the applicant supply a reference, Web site address, or brief statement indicating where the back-up information may be found, and a point of contact, including a telephone number or e-mail address. Applicants are encouraged to read HUD's notices published in the **Federal Register** on March 22 (69 FR 13450) and April 21 (69 FR 21663), 2004, to obtain an understanding of this policy priority and how it can impact your score.

f. *Program Outreach (4 points).* Describe materials or services that will be used to reach potential homebuyers, including persons least likely to apply. For example, what alternative formats will be used to reach persons with a variety of disabilities and what language accommodations will be made for persons with limited English proficiency.

g. *Homebuyer Selection (6 points).* Describe your criteria for selecting homebuyers, including the minimum and maximum income of targeted homebuyers, and other criteria and selection procedures. If the selection criteria or procedures used by individual consortium members or affiliates are different from your criteria, you must describe the differences. You must specify the definition of annual income that you will use to determine the income eligibility of homebuyers as described in Section III.C.2.e. If a consortium member's or affiliate's definition of annual income is different from your income definition, you must identify the consortium member or affiliate and its definition. For organizations that select affiliates after application submission, you must specify how you will impose this requirement in your selection of affiliates.

h. *Performance and Monitoring (4 points).* Describe your plan for overseeing the performance of consortium members and affiliates, including a plan for monitoring each consortium member and affiliate for program compliance at least once during the term of the grant. Your plan should address when and how you will shift funds among consortium members and affiliates to ensure timely and effective use of SHOP funds within the schedule submitted for item b. above.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other resources that can be combined with HUD's program resources to fully fund your proposed program. When combined with the SHOP grant funds, homebuyer sweat equity, and volunteer labor, your leveraged resources must be sufficient to develop the number of units proposed in your application. HUD will consider only those leveraging contributions for which current firm commitments as described in this factor have been provided. A firm commitment means a written agreement under which the applicant, a partner, or an entity agrees to perform services or provide resources for an activity specified in your application. Firm commitments in the form of cash funding (*e.g.*, grants or loans), in-kind contributions, donated land and construction materials, and donated services will count as leverage. Leveraging does not include the dollar value of sweat equity and volunteer labor for your proposed activities. Leveraging does not include financing provided to homebuyers. However, financing provided through the U.S. Department of Agriculture's Section 502 direct loans to homebuyers for construction of their dwellings counts as leveraging for mutual self-help housing programs. Firm commitments must be substantiated by the documentation described below.

Submission Requirements for Rating Factor 4

Firm Commitments of Resources (10 Points). Provide firm commitments (letters, agreements, pledges, etc.) of leveraged resources or services from the source of the commitment. In order to be considered, leveraged resources or services must be committed in writing and include your organization's name, the contributing organization's name (including designation as a Federal, State, local, or private source), the proposed type of commitment, and dollar value of the commitment as it relates to your proposed activities. Each letter of commitment must be signed by an official of the organization legally able to make the commitment on behalf of the organization. See section IV.F, Other Submission Requirements, of the General Section (70 FR 13583) regarding the procedures for submitting third-party documentation. Each letter of commitment must specifically support your FY 2005 SHOP application or specific projects in your FY 2005 application. If your organization depends upon fundraising and donations from unknown sources/providers, you must submit a separate letter committing a specific amount of dollars in fundraising to your proposed FY 2005 SHOP program. Likewise, if you have received funds from organizations and agencies from previous years that are not committed to another activity and you have the sole discretion to commit these funds to your FY 2005 SHOP program, you must submit a separate letter committing these dollars to your FY 2005 SHOP program. In all instances, the dollar amount must be stated in the letters. Letters of commitment may be contingent upon your receiving a grant award. Letters of commitment must be included as an appendix to your application, and do not count toward the page limitation noted in Section IV.B.1. Unsigned, undated, or outdated letters, letters only expressing support of your organization or its proposal, or those not specifically stating the dollar amount or linking the resources to your FY 2005 SHOP application or specific projects in your FY 2005 application do not count as firm commitments.

To receive full credit for leveraging, an applicant's leveraging resources must be clearly identified for its FY 2005 SHOP application and must total at least 50 percent of the amount shown on forms HUD–424–CB needed to complete all properties, minus the proposed SHOP grant amount, homebuyer sweat equity, and volunteer labor.

Rating Factor 5: Achieving Results and Program Evaluation (10 Points)

This factor emphasizes HUD's determination to track whether applicants meet commitments made in their applications and grant agreements and assess their performance in realizing performance goals. HUD requires SHOP applicants to develop an effective, quantifiable, outcome-oriented evaluation plan for measuring performance and determining whether goals have been met using the Logic Model, form HUD–96010. ''Outcomes'' are benefits accruing to the families and/or communities during or after participation in the SHOP program. The self-help housing units developed are outputs as described under this factor,

not outcomes. Applicants must clearly identify the outcomes to be achieved and measured. Examples of outcomes for SHOP include increasing the homeownership rate in a neighborhood or among low-income families by a certain percentage, increasing financial stability (*e.g.*, increasing assets of the low-income homebuyer households through additional savings or home equity) or increasing housing stability (*e.g.*, whether persons and families assisted remain in the home one, two, or five or more years after completion). Outcomes must be quantifiable.

In addition, applicants must establish interim benchmarks for which outputs lead to the ultimate achievement of outcomes. ''Outputs'' are the direct products of the applicant's program activities. Examples of outputs for SHOP include the number of houses constructed, number of sweat equity hours, or number of homes rehabilitated. Outputs should produce outcomes for your program. Outputs must be quantifiable.

''Interim benchmarks'' are steps or stages in your activities that, if reached or completed successfully, will result in outputs for your program. Examples of interim benchmarks for SHOP include income-qualifying homebuyers, obtaining building permits, or securing construction materials and equipment.

Program evaluation requires that you identify program outcomes, outputs, benchmarks, and performance indicators that will allow you to measure your performance. Performance indicators should be objectively quantifiable and measure actual achievements against anticipated achievements. Your evaluation plan should identify what you are going to measure, how you are going to measure it, and the steps you have in place to make adjustments to your work plan if performance targets are not met within established time frames. This factor reflects HUD's goal to embrace high standards of ethics, management, and accountability. Successful applicants will be required to periodically report on their progress in achieving the proposed outcomes identified in the application.

Submission Requirements for Rating Factor 5

Program Evaluation Plan (10 Points). In narrative format, you must submit a program evaluation plan that demonstrates how you will measure your own program performance. Your plan must identify the interim benchmarks, outputs, and outcomes you expect to achieve including time frames for accomplishing these goals. Your plan must demonstrate how interim benchmarks relate to outputs and subsequently to outcomes in your proposed program. Your plan must include performance indicators to measure actual accomplishments against anticipated achievements. You must indicate how your plan will measure the performance of individual consortium members and affiliates, including the standards and measurement methods, and the steps you have in place or how you plan to make adjustments if you begin to fall short of established benchmarks and time frames. In addition to your program evaluation plan, you must complete the Logic Model, form HUD–96010. Using form HUD–96010 to respond to this factor counts toward the page limits set forth in section IV, B of this NOFA. Form HUD–96010 may be downloaded from *www.grants.gov/Apply*. In rating this factor, HUD will consider whether the application identifies outcome measures that meet the definition set out in this NOFA as well as the effectiveness of proposed measurement techniques.

B. Review and Selection Process

1. Factors for Award Used To Evaluate Applications

HUD will evaluate all SHOP applications that successfully complete technical processing and meet threshold and submission requirements for Factors 1 through 5. The maximum number of points awarded for the rating factors is 100 plus the possibility of an additional 2 RC/EZ/EC–II bonus points.

2. RC/EZ/EC–II Bonus Points

Applicants may receive up to 2 bonus points for eligible activities that the applicant proposes to locate in federally designated Empowerment Zones (EZs), renewal communities (RCs), or enterprise communities (ECs) designated by the United States Department of Agriculture (USDA) in Round II (EC–IIs) that are intended to serve the residents of these areas and that are certified to be consistent with the area's strategic plan or RC Tax Incentive Utilization Plan. For ease of reference in this notice, all of the federally designated areas are collectively referred to as ''RC/EZ/EC–IIs'' and the residents of these federally designated areas as ''RC/EZ/EC–II residents.'' The RC/EZ/EC–II certification must be completed for an applicant to be considered for RC/EZ/EC–II bonus points. A list of RC/EZ/EC–IIs can be obtained from HUD's grants web page at *www.hud.gov/offices/adm/grants/fundsavail.cfm.* Applicants can determine if their program or project activities are located in one of these designated areas by using the locator on HUD's Web site at *www.hud.gov/crlocator.* Copies of the certification can be found in the electronic application and on HUD's Web site at *http://www.hud.gov/offices/adm/grants/nofa05/snofaforms.cfm.*

The certification must be completed and signed by the appropriate official in the RC/EZ/EC–II for an applicant to be considered for RC/EZ/EC–II bonus points.

3. Rating

Applications that meet all threshold requirements listed in Section III.C will be rated against the criteria in Factors 1 through 5 and assigned a score. Applications that do not meet all threshold factors will be rejected and not rated.

4. Ranking and Selection Procedures

Applications that receive a total of 75 points or more (without the addition of RC/EZ/EC–II bonus points) will be eligible for selection. RC/EZ/EC–II bonus points will be awarded as follows: 2 points to an applicant with over 25 percent of its proposed units in RC/EZ/EC–II; 1 point for 10 to 25 percent of units in RC/EZ/EC–IIs; and 0 points below 10 percent of units in RC/EZ/EC–II zones. After adding any bonus points for RC/EZ/EC–IIs, HUD will place applications in rank order. HUD will consider rank order, funds availability, and past performance in the selection and funding of applications.

5. Technical Deficiencies

After the application submission date and consistent with regulations in 24 CFR part 4, subpart B, HUD may not consider any unsolicited information you may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. However, HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factor.

Examples of curable (correctible) technical deficiencies include inconsistencies in the funding request, a failure to submit the proper certifications, or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or

technical deficiency. Applicants will be notified by facsimile or by United States Postal Service (USPS), return receipt requested. Clarifications or corrections to technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday. If the deficiency is not corrected within this time period, HUD will reject your application as incomplete and it will not be considered for funding.

6. HUD's Strategic Goals To Implement HUD's Strategic Frameworks and Demonstrate Results

See the General Section (70 FR 13586) for HUD's Strategic Goals.

7. Policy Priorities

Please refer to Section V.A.2 of the General Section (70 FR 13586) for information regarding application criteria addressing HUD's policy priorities.

Note: Upon completion of all applications, grant selections and awards, HUD intends to add relevant data for the SHOP program obtained from the ''Removal of Regulatory Barriers'' policy priority factor to the database on state and local regulatory reform actions maintained at the Regulatory Barrier Clearinghouse Web site at *www.huduser.org.rbc/* used by states, localities, and housing providers to identify regulatory barriers and learn of exemplary local efforts at regulatory reform.

VI. Award Administration Information

A. Award Notices

1. HUD reserves the right to:

a. Fund less than the amount requested by any applicant based on the application's rank, the applicant's past performance, and the amount of funds requested relative to the total amount of available funds;

b. Fund less than the full amount requested by any applicant to ensure a fair distribution of the funds and the development of housing on a national, geographically diverse basis as required by the statute; and/or

c. Not award funds to an applicant with significant performance problems.

HUD will not fund any portion of an application that is ineligible for funding under program threshold requirements in Section III.C.2 or which does not meet other threshold and pre-award requirements in Section III.C.4. The minimum grant award shall be the amount necessary to complete at least 30 units at an average investment of not more than $15,000 per unit or a lesser amount if lower costs are reflected in the application. If any funds remain after all selections have been made, these funds may be available for subsequent competitions.

2. *Debriefing.* For a period of at least 20 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A debriefing request must be made in writing or by email by its authorized official whose signature appears on the SF–424 or his or her successor in the office and submitted to Ms. Lou Thompson, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7164, Washington, DC 20410–7000. Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluation comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

B. Administration and National Policy Requirements

1. When administering your SHOP award, you are required to comply with the following administrative and financial requirements:

A–122 Cost Principles for Non-Profit Organizations; A–133 (Audits of States, Local Governments, and Non-Profit Organizations); and the regulations at 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

2. Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–3080 (this is not a toll-free number) or (800) 877–8339 (toll-free TTY Federal Information Relay Service) or from the Web site at *http://www.whitehouse.gov/omb/circulars/index.html.*

3. Please refer to all award administration information requirements described in Section VI (''Award Administration Information'') of the General Section (70 FR 13590).

C. Reporting. Grantees are required to submit quarterly and annual reports providing data on the construction status, unit characteristics, and income and racial and ethnic composition of homeowners in SHOP-funded properties. For each reporting period, as part of the required report to HUD, grant recipients must include a completed Logic Model (form HUD–96010), which identifies output and outcome achievements.

VII. Agency Contact

Further Information and Technical Assistance. Before the application due date, HUD staff is available to provide general guidance and technical assistance about this NOFA. However, staff is not permitted to assist in preparing your application. Also, following selection of applicants, but before awards are announced, staff may assist in clarifying or confirming information that is a prerequisite to the offer of an award. You may contact Ms. Lou Thompson, SHOP Program Manager, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7164, Washington, DC 20410–7000, telephone (202) 708–2684 (this is not a toll-free number). This number can be accessed via TTY by calling the toll-free Federal Information Relay Service Operator at (800) 877–8339. For technical support for downloading an application or electronically submitting an application, please call Grants.gov Customer Support at 800–518-GRANTS (this is a toll-free number) or e-mail at *support@grants.gov.*

VIII. Other Information

A. Please review Section VIII.A., B., E., F., G., and H. (''Other Information'') of the General Section (70 FR 13591), and please note that these subsections are incorporated by reference.

B. Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0157. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 60 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly, and annual report, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

C. Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made for this Notice in accordance with the regulations at 24 CFR part 50 that implement Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. in the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington DC 20410–0500.

Dated: August 31, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210–29–P

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Pre-application ☐ Construction ☐ Non-Construction		**2. DATE SUBMITTED**	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: / First Name:
City:	Middle Name
County:	Last Name
State: / Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) / Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	
13. PROPOSED PROJECT Start Date: / Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant / b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:	
b. Applicant	$ .00		
c. State	$ .00		
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372	
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix / First Name		Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer ☐ 15-50
☐ 4-5 ☐ 51-100
☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

☐ Less Than $150,000
☐ $150,000 - $299,999
☐ $300,000 - $499,999
☐ $500,000 - $999,999
☐ $1,000,000 - $4,999,999
☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Housing and Urban Development, Office of Departmental Grants Management and Oversight, Room 3156, Washington, D.C. 20410.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to the address above.

OMB No. 1890-0014 Exp. 1/31/2006
SF 424 Supplement

Grant Applications
Detailed Budget

U.S. Department of Housing and Urban Development

OMB Approvoal No. 2501-0017
(expires 01/31/2008)

	Functional Categories [Year 1:__] [Year 2:__] [Year 3:__] [All Years:__]								
Name of Project/Activity:	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
	HUD Share	Applicant Match	Other HUD Funds	Other Fed Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$ 0.00
b. Fringe Benefits									0.00
c. Travel									0.00
d. Equipment (only items > $5,000 depreciated value)									0.00
e. Supplies (only items < $5,000 depreciated Value)									0.00
f. Contractual									0.00
g. Construction									0.00
1. Administration and legal expenses									0.00
2. Land, structures, rights-of way, appraisals, etc.									0.00
3. Relocation expenses and payments									0.00
4. Architectural and engineering fees									0.00
5. Other architectural and engineering fees									0.00
6. Project inspection fees									0.00
7. Site work									0.00
8. Demolition and removal									0.00
9. Construction									0.00
10. Equipment									0.00
11. Contingencies									0.00
12. Miscellaneous									0.00
h. Other (Direct Costs)									0.00
i. Subtotal of Direct Costs									0.00
j. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Grand Total (Year:___):									0.00
Grand Total (All Years):									

form **HUD-424-CB** (1/2004)

Instructions for the HUD Grant Application Detailed Budget Form

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0208
(expires 01/31/2008)

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

General Instructions

This form is designed so that an application can be made for any of HUD's grant programs. Separate sheets must be used for each proposed program year and for a summary of all years.

Check applicable program year or all years box at top of page to indicate which applies.

On the final sheet enter the Grand Total for all years in the applicable box at the bottom of the page. In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets to be shown separately by function or activity. Your budget information should show the entire cost of your proposed program of activities per year. If you are not using funds in any of the line item categories, you should leave the item blank. Pages may be duplicated to show budget data for individual programs, projects or activities.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

Budget Categories

The budget categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each applicable column.

Lines a-f--Show the totals of Lines a to f in each column.

Lines g. Show construction related expenses in the appropriate categories below.

Line g.1.--Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government.

Line g.2.--Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line g.3.--Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line g.4.--Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line g.5.--Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line g.6.--Enter estimated engineering inspection costs.

Line g.7.--Enter the estimated site preparation and restoration which are not included in the basic construction contract.

Line g.8.--Enter the estimated costs related to demolition activities.

Line g.9.--Enter estimated costs of the construction contract.

Line g.10.--Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line g.11.--Enter any estimated contingency costs.

Line g.12.--Enter estimated miscellaneous costs.

Line h.--Enter any other direct costs not already addressed above.

Line i.--Calculate the totals of all applicable columns to determine the Subtotal of Direct Costs.

Line j.--Indicate the approved Indirect Cost Rate (if any) and calculate the indirect cost in accordance with the terms of your approved indirect cost rate and enter the resulting amount.

Grand Total (Year:__)--Enter the sum of lines i. and j. under column 9 for each year, and enter the applicable year, in the blank, for each sheet completed.

Grand Total (All Years)--Enter the sum of all the, "Grand Total (Year:__)" amounts from each sheet completed, under column 9, for all proposed years.

For each budget category (personnel, fringe benefits, travel, etc) you should identify the amount of funding you plan on using in your grant program. You should complete each column as follows:

Column 1 - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.

Column 2 - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.

Column 3 - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.

Column 4 - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.

Column 5 - Identify any State funds that you will be adding to this program.

Column 6 - Identify any Local or Tribal Government funds that you will be adding to this program.

Column 7 - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.

Column 8 - Identify any program income that you expect to generate under this program.

Column 9 - Add columns 1 - 8 across and place the total in Column 9.

Save Data

OMB Approval No. 2501-0017

Grant Application Detailed Budget Worksheet

(Exp. 01/31/2008)

Name and Address of Applicant:

Category — **Detailed Description of Budget (for full grant period)**

1. Personnel (Direct Labor)	**Estimated Hours**	**Rate per Hour**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Position or Individual											
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Direct Labor Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

2. Fringe Benefits	**Rate (%)**	**Base**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Fringe Benefits Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

3. Travel

3a. Transportation - Local Private Vehicle	**Mileage**	**Rate per Mile**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Trans - Local Private Vehicle			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

3b. Transportation - Airfare (show destination)	Trips	Fare	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Transportation - Airfare			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3c. Transportation - Other	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Transportation - Other			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3d. Per Diem or Subsistence (indicate location)	**Days**	**Rate per Day**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Per Diem or Subsistence			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Travel Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4. Equipment (Only items over $5,000 Depreciated value)	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
Total Equipment Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

5. Supplies and Materials (Items under $5,000 Depreciated Value)

5a. Consumable Supplies	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Consumable Supplies			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5b. Non-Consumable Materials	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Non-Consumable Materials			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Supplies and Materials Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6. Consultants (Type)	**Days**	**Rate per Day**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Consultants Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
7. Contracts and Sub-Grantees (List Individually)	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Subcontracts Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

form HUD-424-CBW (2/2003)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

8. Construction Costs

8a. Administrative and legal expenses	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Administrative and legal expenses			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8b. Land, structures, rights-of way, appraisal, etc	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Land, structures, rights-of way, ...			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8c. Relocation expenses and payments	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Relocation expenses and payments			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8d. Architectural and engineering fees	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Architectural and engineering fees			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8e. Other architectural and engineering fees	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Other architectural and engineering fees			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Grant Application Detailed Budget Worksheet

8f. Project inspection fees	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Project inspection fees			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8g. Site work	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Site work			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8h. Demolition and removal	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Demolition and removal			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8i. Construction	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Construction			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8j. Equipment	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Equipment			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8k. Contingencies	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Contingencies			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8l. Miscellaneous	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Miscellaneous			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Construction Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Grant Application Detailed Budget Worksheet

9. Other Direct Costs	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Item											
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Other Direct Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Subtotal of Direct Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
10. Indirect Costs	Rate	Base	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Type											
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Indirect Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Estimated Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

form HUD-424-CBW (2/2003)

OMB Approval No. 2501-0017

Grant Application Detailed Budget Worksheet

(Exp. 01/31/2008)

Detailed Description of Budget			
Analysis of Total Estimated Costs		Estimated Cost	Percent of Total
1	Personnel (Direct Labor)	0.00	0.00%
2	Fringe Benefits	0.00	0.00%
3	Travel	0.00	0.00%
4	Equipment	0.00	0.00%
5	Supplies and Materials	0.00	0.00%
6	Consultants	0.00	0.00%
7	Contracts and Sub-Grantees	0.00	0.00%
8	Construction	0.00	0.00%
9	Other Direct Costs	0.00	0.00%
10	Indirect Costs	0.00	0.00%
	Total:	0.00	100.00%
	HUD Share:	0.00	100.00%
	Match (Expressed as a percentage of the Federal Share):	0.00	0.00%

form HUD-424-CBW (2/2003)

Instructions for Completing the Grant Application Detailed Budget Worksheet

Item	Discussion
This form is to be used to provide detailed budget information regarding your proposed program. If your program requires you to provide program activity information you should use a separate HUD-424-CBW to provide information related to each program activity. The detailed information provided on this form can be summarized on the HUD-424-CB form by checking the "All Years" box at the top of the form and inputting the summary information.	
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant program effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs that are associated with the proposed grant program, including those costs that will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program notice of funding availability (NOFA) discusses the travel requirements that should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs that may be incurred (taxi, etc.).

form **HUD-424-CBW-I** (1/2004)

3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements that should be listed here.
4 – Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items that have a depreciated unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost.
6 – Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees	List the contractors and sub-grantees that will help accomplish the grant effort. Examples of contracts that should be shown here include contracts with Community Based Organizations; liability insurance; and training and certification for contractors and workers. If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Grant Application Detailed Budget (Worksheet) should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section. Unless your proposed program will perform the primary grant effort with in-house employees (which should be listed in section 1), the costs of performing the primary grant activities should be shown in this section. Types of activities which should be shown in this section: • Contracts for all services • Training for individuals not on staff • Contracts with Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed above) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or subgrantee will perform, if not evident.

form **HUD-424-CBW-I** (1/2004)

8 – Construction Costs	
8a – Administrative and legal expenses	Enter estimated amounts needed to cover administrative expenses. Do not include costs that are related to the normal functions of government.
8b – Land, structures, rights-of way, appraisal, etc.	Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).
8c – Relocation expenses and payments	Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.
8d – Architectural and engineering fees	Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).
8e – Other architectural and engineering fees	Enter estimated engineering costs, such as surveys, tests, soil borings, etc.
8f – Project inspection fees	Enter estimated engineering inspection costs.
8g – Site work	Enter the estimated site preparation and restoration costs that are not included in the basic construction contract.
8h – Demolition and removal	Enter the estimated costs related to demolition activities.
8i – Construction	Enter estimated costs of the construction contract.
8j - Equipment	Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.
8k – Contingencies	Enter any estimated contingency costs.
8l – Miscellaneous	Enter estimated miscellaneous costs.
9 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage Relocation, if costs are paid directly by your organization (if relocation costs are paid by a subgrantee, it should be reflected in Section 7)
10 - Indirect Costs	Indirect costs (including Facilities and Administration costs) are those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indicate your approved Indirect Cost Rate (if any) and calculate the indirect costs in accordance with the terms of your approved indirect cost rate and enter the resulting amount. Also show the applicable cost base amount and identify the proposed cost base type.
Total Estimated Costs	Enter the grand total of all the applicable columns.

The eight rightmost columns allow you to identify how the costs will be spread between the HUD Share and other contributors (including Match funds and Program Income). This information will help the reviewers better understand your program and priorities.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*: 4c	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 08/31/2006)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD) , involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form.
However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Certification of Consistency with the RC/EZ/EC-IIs Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the strategic plan of a federally-designated empowerment zone (EZs), renewal community (RCs), or enterprise community (ECs); designated by the United States Department of Agriculture (USDA) in round II (EC-IIs).

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of RC/EZ/EC _____

I further certify that the proposed activities/projects will be located within theRC/EZ/EC-IIs or strategic planning communities that are intended to serve the RC/EZ/EC-IIs strategic planning community residents, or renewal community. (2 points)

Name of the Official Authorized to Certify the RC/EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

Third Party Documentation Facsimile Transmittal

U. S. Department of Housing and Urban Development
Office of Department Grants Management and Oversight

OMB Approval No. 2535-0118 (exp. 04/30/2005)

Public reporting burden for this collection of information is estimated to average 6 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
This form is used for third party applicants as required for applications submissions and other materials that are not normally available as electronic files, e.g. leverage letters, documentation from books, reports or other such items. This information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Instructions

IMPORTANT NOTE: If you have completed the SF 424 Request for Federal Assistance form, data fields will be pre-populated within this form.

Item	Entry
1. a-d Applicant Information	a. Enter legal name of applicant, name of primary organization unit (including division, if applicable), which will undertake the assistance activity. b. Enter the complete address, Street, City, County, State and Zip Code. c. Enter the country, i.e. USA. d. Enter the DUNS number (received from DUN and Bradstreet).
2. a-c. Catalog of Federal Domestic Assistance number and title of the program and program component.	a. Enter the Catalog of Federal Domestic Assistance number of the program you are apply for federal assistance. b. Enter the title of the program which assistance is requested. c. Enter program component under which assistance is requested. If there are no sub categories within a program you may leave ***"program component"*** blank. (For example: CFDA: 14.123)
3. a-b. Facsimile Contact Information	**a.** Enter the name of the Department and/or **b.** Division in which this facsimile is being transmitted.
4. Name and telephone number	Enter name, email and telephone number *(remember to include area code)* of person to be contacted on matters involving the transmitting fax.
5. Email	Enter email address of person to contacted regarding facsimile.
6. b-d What are you transmitting/number of pages?	**a.** What are you transmitting? Check the appropriate box indicating what type of document you are transmitting, **b.** certification, **c.** document, **d.** letter, or **e.** other. For example, if you are transmitting a Memorandum of Understanding (MOU) this would be considered a document so you would check ☐ ***document.***. *Please note: for each document you are transmitting a separate cover page is needed.*
7. How many pages are being faxed?	Indicate how many pages including the cover are being faxed.

Third Party Documentation Facsimile Transmittal

U. S. Department of Housing and Urban Development
Office of Department Grants Management and Oversight

OMB Approval No. 2535-0118 (exp. 04/30/2005)

1. Applicant Information		3. Facsimile Contact Information	
a. Legal Name:		a. Department:	
		b. Division	
b. Address:		4. Name and telephone number of person to be contacted on matters involving this facsimile.	
Street:			
City:	County:	Prefix:	First Name:
State:	Zip Code	Middle Initial:	Last Name:
c. Country		5. Email:	
d. DUNS Number:			
2. a. Catalog of Federal Domestic Assistance Number: CFDA No. ___ ___.___ ___ ___		Phone number (include area code)	Fax number (include area code)
b. Title (Name of Program)		6. What is your transmittal? (Check one box per fax)	
c. Program Component		b. Certification ☐	c. Document ☐ / d. Match/Leverage Letter ☐ / e. Other ☐
		7. How many pages (including cover) are being faxed?	

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight
Room 3156
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

Previous versions obsolete form **HUD-2994** (03/2003)

Logic Model

U.S. Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114
(exp. 12/31/2006)

Program Name: _____

Component Name: _____

Strategic Goals	Policy Priorities	Problem, Need, Situation	Service or Activity	Benchmarks		Outcomes		Measurement Reporting Tools	Evaluation Process
				Output Goal	Output Result	Achievement Outcome Goals	End Results		
1		2	3	4	5	6	7	8	9
Policy		Planning		Intervention		Impact		Accountability	
				Short Term				a. b. c. d. e.	
				Intermediate Term				a. b. c. d. e.	
				Long Term				a. b. c. d. e.	

form **HUD-96010** (02/2005)

Logic Model Instructions U.S. Department of Housing And Urban Development Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114 (exp. 12/31/2006)

The public reporting burden for this collection of information for the Logic Model is estimated to average 18 hours per response for applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD. HUD may not conduct, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, in the Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2535-0114.

The information submitted in response to the Notice of Funding Availability for the Logic Model is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Instructions:

Responses to rating factor five should be in this format. Your response should be in bullet format rather than narrative. Please read each NOFA carefully to ensure the performance measures requested for this factor are reflected on the logic model form.

Program Name: The HUD funding program under which you are applying. If you are applying for a component of a program please include the Program Name as well as the Component Name.

Component Name: The HUD funding program under which you are applying.

Column 1: ***HUD's Strategic Goals***: Indicate in this column **the number** of the goal(s) that your proposed service or activity is designed to achieve. HUD's strategic goals are:

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

Policy Priority: Indicate in this column **the number** of the HUD Policy Priority(ies), if any, your proposed service or activity promotes. Applicants are encouraged to undertake specific activities that will assist the Department in implementing its Policy Priorities. HUD's Policy Priorities are:

1. Provide Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organization in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs
6. Ending Chronic Homelessness.
7. Removal of Barriers to Affordable Housing.
8. Participation in Energy Star.

Column 2: **Problem, Need, or Situation**: Provide a general statement of need that provides the rationale for the proposed service or activity.

Column 3: **Service or Activity:** Identify the activities or services that you are undertaking in your work plan, which are crucial to the success of your program. Not every activity or service yields a direct outcome.

Column 4 and Column 5: **Benchmarks:** These columns ask you to identify benchmarks that will be used in measuring the progress of your services or activities. Column 4 asks for specific interim or final products (called outputs) that you establish for your program's services or activities. Column 5 should identify the results associated with the product or output. These may be numerical measures characterizing the results of a program activity, service or intervention and are used to measure performance. These outputs should lead to targets for achievement of outcomes. Results should be represented by both the actual # and % of the goal achieved.

Column 4: **Benchmarks/Output Goal:** Set quantifiable output goals, including timeframes. These should be products or interim products, which will allow you and HUD to monitor and assess your progress in achieving your program workplan.

Column 5: **Benchmark/ Output Result:** Report actual result of your benchmarks. The actual result could be number of housing units developed or rehabilitated, jobs created, or number of persons assisted. Outputs may be short, intermediate or long-term. ***(Do not fill out this section with the application)***

Column 6 and Column 7: **Outcomes:** Column 6 and Column 7 ask you to report on your expected and actual outcomes – the ultimate impact you hope to achieve. Column 6 asks you to identify outcomes in terms of the impact on the community, people's lives, changes in economic or social status, etc. Column 7 asks for the actual result of the outcome measure listed in Column 6, which should be updated as applicable.

Column 6: **Outcomes/ Goals:** Identify the outcomes that resulted in broader impacts for individuals, families/households, and/or the community. For example, the program may seek to improve the environmental conditions in a neighborhood, increase affordable housing, increase the assets of a low-income family, or improve self-sufficiency.

Proxy Outcome(s): Often direct measurement of the intended outcome is difficult or even impossible -- to measure. In these cases, applicants/grantees should use a proxy or surrogate measure that corresponds with the desired outcome. For example, improving quality of life in a neighborhood could be measured by a proxy indicator such as increases in home prices or decreases in crime. Training programs could be measured by the participant's increased wages or reading skills. The person receiving the service must meet eligibility requirements of the program.

Column 7: **Outcomes/Actual Result:** Identify specific achievements of outcomes listed in Column 6. ***(Do not fill out this section with the application)***

Column 8: **Measurement Reporting Tools:** (a) List the tools used to track output or outcome information (e.g., survey instrument; attendance log; case report; pre-post test; waiting list; etc); (b) Identify the place where data is maintained, e.g. central database; individual case records; specialized access database, tax assessor database; local precinct; other; (c) Identify the location, e.g. on-site; subcontractor; other; (d) Indicate how often data is required to be collected, who will collect it and how often data is reported to HUD; and (e) Describe methods for retrieving data, e.g. data from case records is retrieved manually, data is maintained in an automated database. This tool will be available for HUD review and monitoring and should be used in submitting reporting information.

Column 9: **Evaluation Process:** Identify the methodology you will periodically use to assess your success in meeting your benchmark output goals and output results, outcomes associated to the achievement of the purposes of the program, as well as the impact that the work has made on the individuals assisted, the community, and the strategic goals of the Department. If you are not meeting the goals and results projected for your performance period, the evaluation process should be used as a tool to ensure that you can adjust schedules, timing, or business practices to ensure that goals are met within your performance period.

America's Affordable Communities Initiative	U.S. Department of Housing and Urban Development	OMB approval no. 2510-0013 (exp. 03/31/2007)

Public reporting burden for this collection of information is estimated to average 3 hours. This includes the time for collecting, reviewing, and reporting the data. The information will be used for encourage applicants to pursue and promote efforts to remove regulatory barriers to affordable housing. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Questionnaire for HUD's Initiative on Removal of Regulatory Barriers

Part A. Local Jurisdictions. Counties Exercising Land Use and Building Regulatory Authority and Other Applicants Applying for Projects Located in such Jurisdictions or Counties [Collectively, Jurisdiction]

	1	2
1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question # 4.	☐ No	☐ Yes
2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate and middle income families, for at least the next five years?	☐ No	☐ Yes
3. Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped "as of right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.). If the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.	☐ No	☐ Yes
4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards?	☐ Yes	☐ No

5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes.	☐ No	☐ Yes
6. If yes to question #5, does the statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation?	☐ No	☐ Yes
7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?	☐ No	☐ Yes
8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
9. Does your jurisdiction use a recent version (i.e. published within the last 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification. In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes? Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability.	☐ No	☐ Yes
10. Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?	☐ No	☐ Yes

11. Within the past five years, has a jurisdiction official (i.e., chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), the local legislative body, or planning commission, directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process, to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
12. Within the past five years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction's "HUD Consolidated Plan?" If yes, attach a brief list of these major regulatory reforms.	☐ No	☐ Yes
13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (*e.g.* water, sewer, street width) to significantly reduce the cost of housing?	☐ No	☐ Yes
14. Does your jurisdiction give "as-of-right" density bonuses sufficient to offset the cost of building below market units as an incentive for any market rate residential development that includes a portion of affordable housing? (As applied to density bonuses, "as of right" means a density bonus granted for a fixed percentage or number of additional market rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market rate units.)	☐ No	☐ Yes
15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? Alternatively, does your jurisdiction conduct concurrent, not sequential, reviews for all required permits and approvals?	☐ No	☐ Yes
16. Does your jurisdiction provide for expedited or "fast track" permitting and approvals for all affordable housing projects in your community?	☐ No	☐ Yes
17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval?	☐ No	☐ Yes
18. Does your jurisdiction allow "accessory apartments" either as: a) a special exception or conditional use in all single-family residential zones or, b) "as of right" in a majority of residential districts otherwise zoned for single-family housing?	☐ No	☐ Yes
19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?	☐ No	☐ Yes
20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations?	☐ Yes	☐ No
Total Points:		

Part B. State Agencies and Departments or Other Applicants for Projects Located in Unincorporated Areas or Areas Otherwise Not Covered in Part A

		1	2
1	Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities regulating development have a comprehensive plan with a "housing element?" If no, skip to question # 4	☐ No	☐ Yes
2.	Does you state require that a local jurisdiction's comprehensive plan estimate current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate, and middle income families, for at least the next five years?	☐ No	☐ Yes
3.	Does your state's zoning enabling legislation require that a local jurisdiction's zoning ordinance have a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped in these categories, that can permit the building of affordable housing that addresses the needs identified in the comprehensive plan?	☐ No	☐ Yes
4.	Does your state have an agency or office that includes a specific mission to determine whether local governments have policies or procedures that are raising costs or otherwise discouraging affordable housing?	☐ No	☐ Yes
5.	Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact upon housing affordability address these barriers to affordability?	☐ No	☐ Yes
6.	Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal?	☐ No	☐ Yes
7.	Does your state have specific enabling legislation for local impact fees? If no skip to question #9.	☐ No	☐ Yes
8.	If yes to the question #7, does the state statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (*nexus*) and a method for fee calculation?	☐ No	☐ Yes
9.	Does your state provide significant financial assistance to local governments for housing, community development and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities?	☐ No	☐ Yes

10. Does your state have a mandatory state-wide building code that a) does not permit local technical amendments and b) uses a recent version (i.e. published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification? Alternatively, if the state has made significant technical amendment to the model code, can the state supply supporting data that the amendments do not negatively impact affordability?	☐ No	☐ Yes
11. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
12. Within the past five years has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other State-administered permits or programs involving housing development. If yes, briefly list these changes.	☐ No	☐ Yes
13. Within the past five years, has your state (i.e., Governor, legislature, planning department) directly or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
14. Within the past five years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the states' "Consolidated Plan submitted to HUD?" If yes, briefly list these major regulatory reforms.	☐ No	☐ Yes
15. Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions.	☐ No	☐ Yes
Total Points:		

Form HUD-27300 (4/04)

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Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005 (Sept. 2, 2005; 119 Stat. 1988)

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